



**CITY OF BUFFALO**

DEPARTMENT OF LAW

**EXHIBIT**

**D**

JAMES KISTNER

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JAMES C. KISTNER,  
Plaintiff,

- vs - Civil Action No.  
18-cv-00402

THE CITY OF BUFFALO,  
c/o Corporation Counsel,  
BYRON LOCKWOOD, individually and in  
his capacity as Police Commissioner  
of the Buffalo Police Department,  
DANIEL DERENDA, individually and in his  
capacity as Police Commissioner of the  
Buffalo Police Department,  
LAUREN McDERMOTT, individually and  
in her capacity as a Buffalo Police Officer,  
JENNY VELEZ, individually and in her  
capacity as a Buffalo Police Officer,  
KARL SCHULZ, individually and in his  
capacity as a Buffalo Police Officer,  
KYLE MORIARTY, individually and in his  
capacity as a Buffalo Police Officer,  
DAVID T. SANTANA, individually and in his  
capacity as a Buffalo Police Officer,  
JOHN DOE(S), individually and in his/their  
capacity as a Buffalo Police Officer(s),  
Defendants.

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FEB 21 2020

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1                   Examination before trial of JAMES KISTNER,  
2 Plaintiff, taken pursuant to the Federal Rules of  
3 Civil Procedure, in the law offices of RUPP BAASE  
4 PFALZGRAF & CUNNINGHAM, LLC, 1600 Liberty Building,  
5 Buffalo, New York, on February 6, 2020, commencing  
6 at 10:20 a.m., before ANNE T. BARONE, RPR, Notary  
7 Public.

8

9 APPEARANCES:     RUPP BAASE  
10                   PFALZGRAF & CUNNINGHAM, LLC,  
11                   By CHAD DAVENPORT, ESQ.,  
12                   1600 Liberty Building,  
13                   Buffalo, New York 14202,  
14                   (716) 854-3400,  
15                   davenport@ruppbaase.com,  
16                   Appearing for the Plaintiff.

17                   TIMOTHY A. BALL, ESQ.,  
18                   Corporation Counsel,  
19                   By MAEVE E. HUGGINS, ESQ.,  
20                   Assistant Corporation Counsel,  
21                   1137 City Hall,  
22                   Buffalo, New York 14202,  
23                   (716) 851-4334,  
24                   mhuggins@city-buffalo.com,  
25                   Appearing for the Defendants.

10:20:59 20 JAMES KISTNER, 37 Schmarbeck, Buffalo,  
10:21:12 21 New York 14212, after being duly called and sworn,  
10:21:12 22 testified as follows:

10:21:19 23

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10:21:19 1 EXAMINATION BY MS. HUGGINS:

10:21:19 2

10:21:19 3 Q. Good morning, Mr. Kistner. We met  
10:21:22 4 again for a second time just a moment ago off the  
10:21:25 5 record. My name is Maeve Huggins. I'm an attorney  
10:21:27 6 for the City of Buffalo. We're here today for your  
10:21:30 7 deposition in regards to a federal lawsuit that you  
10:21:32 8 filed involving an incident with the Buffalo Police  
10:21:36 9 Department.

10:21:37 10 Have you given any sworn testimony since  
10:21:39 11 your 50-h in June of 2017?

10:21:43 12 A. No.

10:21:43 13 Q. Okay. I'd just like to review the  
10:21:46 14 ground rules before we proceed with the deposition.

10:21:48 15 We have -- you're under oath, obviously,  
10:21:50 16 and we have a reporter here who's taking down  
10:21:52 17 everything that's being said.

10:21:54 18 For the sake of the reporter and so that we  
10:21:55 19 have a clean record, I'd ask that you allow me to  
10:21:57 20 finish my question before you answer. I'll extend  
10:21:59 21 the same courtesy to you and allow you to finish  
10:22:01 22 before I move on to the next question.

10:22:03 23 If at any point you don't understand my

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10:22:05 1 question, please let me know. I'm happy to  
10:22:08 2 rephrase it.

10:22:10 3 The reporter can only take down verbal  
10:22:12 4 responses, so I'd ask that your responses be  
10:22:15 5 verbal. To the extent that you want to talk with  
10:22:17 6 your hands or demonstrate something, I would just  
10:22:19 7 verbalize it for the record so that we have it  
10:22:21 8 memorialized.

10:22:22 9 If you need a break at any point, we can  
10:22:25 10 take one. I'm just going to ask that if there's  
10:22:27 11 a question pending, that you answer it before we  
10:22:29 12 break. Fair enough?

10:22:30 13 A. Yeah.

10:22:33 14 Q. Oh. And I should say this: Mm-hmm,  
10:22:35 15 shoulder shrugs, yeah, nah, those are difficult for  
10:22:40 16 her to record accurately, so I would just ask that  
10:22:42 17 you avoid those, if possible.

10:22:44 18 Obviously, at some point this may become  
10:22:47 19 conversational, but for the sake of the record, I'd  
10:22:49 20 ask that you avoid those type of words.

10:22:51 21 Before coming in today, have you taken any  
10:22:54 22 medications within the --

10:22:55 23 A. No.

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10:22:56 1 Q. -- last --

10:22:57 2 MR. DAVENPORT: Yeah. You've got to wait  
10:22:59 3 for her to finish her question.

10:23:00 4 THE WITNESS: Okay.

10:23:00 5 BY MS. HUGGINS:

10:23:01 6 Q. It's okay. Everyone does it, and  
10:23:03 7 sometimes this becomes conversational, but she is  
10:23:06 8 quite literally typing down every word we say.

10:23:08 9 A. Okay.

10:23:09 10 Q. And it's tough if we speak over each  
10:23:11 11 other.

10:23:11 12 So before coming in today, in the last  
10:23:14 13 24 hours have you taken any medications that would  
10:23:16 14 inhibit your ability to give truthful testimony?

10:23:20 15 A. No medications.

10:23:21 16 Q. Okay. Are there any medications that  
10:23:23 17 you should have been taking that you did not within  
10:23:25 18 the last 24 hours?

10:23:26 19 A. No.

10:23:31 20 Q. Have you consumed any drugs, alcohol,  
10:23:33 21 or marijuana within the last 24 hours?

10:23:36 22 A. No.

10:23:38 23 Q. Is there any reason why you can't give

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10:23:40 1 truthful testimony today?

10:23:41 2 A. No.

10:23:43 3 Q. Have you reviewed anything in  
10:23:44 4 preparation for your testimony today?

10:23:47 5 A. No.

10:23:49 6 Q. Did you look at any documents in  
10:23:51 7 preparation for today?

10:23:52 8 A. No.

10:23:53 9 Q. Review any video?

10:23:55 10 A. No.

10:23:57 11 Q. Review any photographs?

10:23:59 12 A. No.

10:24:02 13 Q. There is obviously some video clips  
10:24:04 14 with regard to the incident on January 1st, 2017.

10:24:08 15 When was the last time that you viewed that video?

10:24:16 16 A. Tuesday.

10:24:16 17 Q. Of this week?

10:24:17 18 A. Yeah.

10:24:23 19 Q. Did you review any documents or  
10:24:26 20 photographs on Tuesday?

10:24:27 21 A. Yes.

10:24:28 22 Q. Okay. What did you review specifically  
10:24:31 23 with regard to video on Tuesday?

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10:24:37 1 A. I watched the first clip.

10:24:41 2 Q. What is the first clip? What does that

10:24:44 3 depict?

10:24:45 4 A. It's the one I got hit in. I call it

10:24:47 5 the first clip.

10:24:48 6 Q. Okay. What documents -- before I move

10:24:58 7 on, any other video that you reviewed on Tuesday?

10:25:02 8 A. No.

10:25:02 9 Q. What documents did you review on

10:25:04 10 Tuesday?

10:25:05 11 A. The transcript of the 50-h hearing.

10:25:12 12 Q. Any other documents?

10:25:13 13 A. No.

10:25:15 14 Q. Did you review any photographs on

10:25:17 15 Tuesday?

10:25:18 16 A. No.

10:25:30 17 Q. I am going to try to not cover the same

10:25:35 18 ground of the 50-h, but for the sake of having to

10:25:38 19 orient you to time frame and place for some of my

10:25:40 20 questions, I may have to do that.

10:25:42 21 If at any point you're not sure about what

10:25:45 22 I'm referring to, please let me know. I want to

10:25:49 23 make sure that we are on the same page in terms of

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10:25:51 1 my questioning. Fair enough?

10:25:52 2 A. Okay.

10:25:55 3 Q. Have you discussed the January 1st,  
10:25:57 4 2017 incident with anyone, aside from your  
10:26:02 5 attorneys?

10:26:06 6 A. Yes.

10:26:06 7 Q. Who have you discussed that incident  
10:26:08 8 with?

10:26:08 9 A. My family.

10:26:10 10 Q. Who in your family?

10:26:15 11 A. My sister Gwen.

10:26:18 12 Q. Anyone else in your family?

10:26:21 13 A. Well, Rachel and I aren't married, but  
10:26:24 14 I've talked to Rachel about it.

10:26:27 15 Q. Anyone else aside from Gwen and Rachel  
10:26:33 16 that you recall?

10:26:34 17 A. Since when? I mean --

10:26:37 18 Q. Well --

10:26:38 19 A. WIVB. I did an interview with them.

10:26:48 20 Q. Anyone else?

10:26:49 21 A. I can't remember anybody off the top of  
10:26:55 22 my head.

10:26:55 23 Q. Have you discussed what you were going

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10:26:57 1 to testify about in this deposition with anyone  
10:27:00 2 aside from your attorney?

10:27:03 3 A. No. Other than Rachel.

10:27:12 4 Q. Did you take any photographs of the  
10:27:14 5 January 1st, 2017 incident involving the Buffalo  
10:27:20 6 Police Department?

10:27:20 7 A. No.

10:27:20 8 Q. Did you take any photographs of any  
10:27:23 9 injuries you allegedly suffered from that incident?

10:27:32 10 THE WITNESS: Rachel and Earl used their  
10:27:36 11 cell phones, I think, to try to get pictures of my  
10:27:39 12 wrists.

10:27:42 13 I'm not exactly sure which one of those cell  
10:27:44 14 phones we were able to download, but you got them.

10:27:51 15 Other than that, no.

10:27:52 16 BY MS. HUGGINS:

10:27:52 17 Q. Are you aware of how many photographs  
10:27:54 18 were taken of your wrists?

10:27:55 19 A. Not a clue. I mean, off the top of my  
10:27:58 20 head, no.

10:27:59 21 Q. Do you know when those photographs were  
10:28:01 22 taken?

10:28:06 23 A. The first week of January 2017.

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10:28:10 1 I don't know the day.

10:28:25 2 Q. Are you aware of any camera or  
10:28:27 3 surveillance systems that captured any video of the  
10:28:31 4 January 1st, 2017 incident involving the Buffalo  
10:28:36 5 Police Department?

10:28:36 6 A. Yeah.

10:28:37 7 Q. What camera system or surveillance  
10:28:40 8 system are you aware of that may have captured  
10:28:44 9 footage on that day?

10:28:45 10 A. Rachel's house at 37 Schmarbeck has  
10:28:49 11 a Swann system. I think it has eight cameras.

10:28:56 12 There are two of them that are mounted below  
10:28:58 13 the eaves up on the third floor that photograph the  
10:29:04 14 front of the house. One on the right and one on  
10:29:08 15 the left of those upper windows.

10:29:11 16 Q. When you said two, are you referring to  
10:29:13 17 two individual cameras of the eight?

10:29:15 18 A. Yeah.

10:29:17 19 Q. Where are the remaining six cameras  
10:29:20 20 positioned?

10:29:20 21 A. In the backyard, where the kids play;  
10:29:22 22 or on the side of the house, looking down where the  
10:29:29 23 kids play; or on the back of the house, looking to

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10:29:32 1 the right and the left.

10:29:40 2 Q. Who purchased that system?

10:29:50 3 A. Rachel and I went to Walmart, and she  
10:29:54 4 paid for it.

10:29:54 5 Q. When was it installed?

10:30:05 6 A. I'm going to guess, 2015. I don't even  
10:30:11 7 know the month.

10:30:12 8 Q. How are the cameras in that system  
10:30:15 9 activated?

10:30:17 10 A. They run all the time. There are ways  
10:30:23 11 you can set it to where they'll just go on when  
10:30:27 12 there's motion, but we're not that sophisticated.  
10:30:31 13 We never understood how to make that work.

10:30:33 14 So we just took it out of the box, put it  
10:30:36 15 on the shelf, plugged it in, wired the cameras up,  
10:30:39 16 I mounted them outside, and turned it on. And  
10:30:45 17 that's essentially how it's worked ever since we  
10:30:48 18 bought it. It's still working like that.

10:30:50 19 Q. Has it been just recording continuously  
10:30:52 20 since it was installed?

10:30:53 21 A. I think so, yeah. Unless there's  
10:30:55 22 a power failure or something, yeah. But we never  
10:30:59 23 turned it off except once, that I remember real

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10:31:03 1 distinctly.

10:31:04 2 Q. When did you turn it off?

10:31:09 3 A. In January of 2017, Jim Ostrowski told  
10:31:16 4 me: You have to save the video on that machine.10:31:22 5 I called Gary, a fellow who had repaired  
10:31:25 6 a computer for me, and said, I've got to get this  
10:31:28 7 off of here, and I don't know how to do it.10:31:33 8 We had unplugged the machine I'm going to  
10:31:39 9 say 9 o'clock at night on January 1st, which was  
10:31:43 10 after all this was over and I was home, because we  
10:31:49 11 were told: Don't let it keep running, because we  
10:31:53 12 don't know when we're going to get there to  
10:31:56 13 retrieve it. Just unplug it, and I'll try to be  
10:31:59 14 there tomorrow or the next day.10:32:01 15 That's what Gary, the guy that told me he  
10:32:04 16 was coming to get it, so --

10:32:05 17 Q. Do you have -- I apologize. Continue.

10:32:11 18 A. I don't know when Gary actually showed  
10:32:14 19 up. I think it was probably the next day or the  
10:32:16 20 day after. We gave him the keyboard, the mouse,  
10:32:20 21 and the DVR.10:32:22 22 We didn't give him any of the cameras  
10:32:24 23 because they're all hooked up with leads going**JACK W. HUNT & ASSOCIATES, INC.**

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10:32:26 1 outside.

10:32:27 2 So he took the machine and the keyboard that  
10:32:30 3 came with it and the -- does it -- maybe it didn't  
10:32:33 4 have a keyboard. Just a mouse and the clicker.

10:32:35 5 The remote control.

10:32:38 6 Q. In terms of hardware of that system,  
10:32:42 7 there's eight cameras and then there's what you've  
10:32:45 8 called a DVR. Is that -- what is your understanding  
10:32:48 9 of what that DVR is and does for the system?

10:32:54 10 A. Just records everything, everything it  
10:32:59 11 sees, and then it lets you go back in with the  
10:33:01 12 mouse and ask it to replay what is up there.

10:33:06 13 That's about as sophisticated as we ever got  
10:33:10 14 with it so we could see what happened outside if  
10:33:12 15 something was amiss. We could rewind it and say,  
10:33:16 16 what happened here?

10:33:16 17 Q. Do you view the video on the DVR or is  
10:33:20 18 there a screen?

10:33:20 19 A. There's a monitor.

10:33:23 20 Q. Is the monitor something apart of the  
10:33:26 21 Swann system?

10:33:26 22 A. No.

10:33:27 23 Q. You've hooked the system up to the

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10:33:28 1 monitor?

10:33:29 2 A. Yeah. It's a TV.

10:33:30 3 Q. What is your understanding of how  
10:33:33 4 frequently the footage will record over itself?

10:33:38 5 A. I don't know.

10:33:44 6 Q. The two cameras that are affixed  
10:33:48 7 under the third-floor eaves on the front of  
10:33:52 8 37 Schmarbeck, what areas of the street does those  
10:34:00 9 cameras capture?

10:34:03 10 A. The one on the left -- if you're in the  
10:34:05 11 house looking out, the one on the left, if you're  
10:34:08 12 in the house looking out, looks almost like  
10:34:10 13 straight down.

10:34:12 14 The one on the right looks to the left, like  
10:34:16 15 you're looking up the street toward Broadway.

10:34:20 16 Q. Are other homes located on Schmarbeck  
10:34:24 17 within the view of that second camera you've  
10:34:27 18 described?

10:34:32 19 A. 24 -- to a large part, 24 Schmarbeck,  
10:34:40 20 that's on that camera. I'm pretty sure you can see  
10:34:47 21 the profile of 33 on that camera. The camera on  
10:34:57 22 the right, as you're looking toward the street.

10:34:59 23 The camera on the left, I don't think you

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10:35:01 1 can see any other houses. The one that looks  
10:35:07 2 almost straight down, I don't think you can see any  
10:35:09 3 other houses.

10:35:12 4 Q. Does the camera capture the sidewalk  
10:35:18 5 and the streets in front of both 24 and 33  
10:35:23 6 Schmarbeck Avenue?

10:35:26 7 A. The one on the right that looks in that  
10:35:30 8 direction, yeah, it captures the sidewalk on both  
10:35:36 9 sides of the street.

10:35:38 10 Q. Why did you purchase the -- strike  
10:35:41 11 that.

10:35:41 12 Why did Rachel purchase the Swann system, if  
10:35:53 13 you know?

10:35:53 14 A. There are two reasons. For home  
10:35:56 15 security, and it was on sale \$200 off.

10:36:11 16 Q. Does the Swann system allow someone to  
10:36:16 17 access video footage without preserving the  
10:36:19 18 footage?

10:36:22 19 A. Say that again.

10:36:24 20 Q. Sure. Let me rephrase it slightly.

10:36:26 21 Using the system, are you able to view  
10:36:29 22 footage without preserving it?

10:36:35 23 A. I don't know. You mean, can I --

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10:36:41 1 I don't know.

10:36:42 2 Q. Have you ever gone onto the system,  
10:36:46 3 accessed footage from a period of time, and not  
10:36:55 4 saved that footage?

10:37:05 5 A. We -- either Rachel or I -- Earl even  
10:37:09 6 used it in January, he looked at it. We look at it  
10:37:13 7 almost every day. I mean, if there's something --  
10:37:16 8 it's kind of like the window on the world outside.

10:37:25 9 If you're missing a garbage can, you can go  
10:37:28 10 back and find out what happened to the trash can.  
10:37:30 11 Where did the trash can go?

10:37:35 12 If Charlie lost his ball in the backyard,  
10:37:37 13 you can look: Where did Charlie's ball go?

10:37:44 14 We use it in that sense to look at what has  
10:37:47 15 happened to try to understand.

10:37:54 16 Have we ever used it to look back and not  
10:37:57 17 preserved it? I think to preserve it -- it's still  
10:38:00 18 beyond me. I've still got to call somebody in and  
10:38:03 19 say, get this off of here. I want to keep it  
10:38:05 20 forever.

10:38:05 21 Q. Is it your understanding, based on your  
10:38:09 22 experience with the Swann system, that you have the  
10:38:11 23 ability to access video, and preserving it is

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10:38:14 1 something separate?

10:38:16 2 A. I don't know what its abilities are.

10:38:19 3 I don't know. We just -- we use it for what we use  
10:38:22 4 it for.

10:38:23 5 I'm sure it will do all kind of things if  
10:38:26 6 you're smart enough to sit there and study the  
10:38:29 7 book. I don't even know if I've got the book  
10:38:31 8 anymore.

10:38:38 9 Q. In January of 2017, who had access to  
10:38:42 10 the footage on the Swann system DVR?

10:38:46 11 A. Just Rachel and I. But Earl, he was  
10:38:50 12 there that morning, and when I was in the police  
10:38:54 13 car and he came back in the house, while Rachel was  
10:38:57 14 at the front window, Earl went -- because he's  
10:39:02 15 smart enough to figure out how to play and rewind,  
10:39:05 16 which is about all I ever showed him, because I  
10:39:10 17 don't know any more about it -- he looked at it.  
10:39:13 18 So Earl looked at it.

10:39:15 19 Other than Earl looking at it that day --  
10:39:18 20 oh, and Earl showed it to Jim Ostrowski that  
10:39:22 21 morning. So that's at least twice that Earl  
10:39:25 22 rewound it on that morning and looked at it.

10:39:26 23 Q. How did you come to learn that?

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10:39:28 1 A. That Earl had looked at it?

10:39:31 2 Q. Yes.

10:39:32 3 A. I talk to my son as much as I can.

10:39:44 4 Q. Prior to having Gary retrieve footage

10:39:52 5 from January 1st, 2017, had you viewed footage from

10:39:57 6 that date?

10:40:02 7 A. Yeah. I think I looked at it as soon

10:40:04 8 as I got home that day.

10:40:07 9 Q. What is Gary's full name?

10:40:13 10 A. I don't remember.

10:40:17 11 Q. How did you contact Gary to make

10:40:19 12 arrangements for him to retrieve the video?

10:40:21 13 A. A refrigerator magnet.

10:40:23 14 Q. Do you still have that magnet?

10:40:25 15 A. No. I gave it to Jill. I think Jill's

10:40:29 16 got it. I think I sent it to her in the mail.

10:40:37 17 Q. Have you had any contact with Gary

10:40:39 18 since his retrieval of the video off the system?

10:40:51 19 A. Well, he dropped it off and I paid him.

10:40:59 20 I might have talked to him on the phone over the

10:41:01 21 last several years twice, but I can't remember what

10:41:04 22 we talked about.

10:41:08 23 Q. Any time that you communicated with

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10:41:11 1 him, was it through whatever contact information  
10:41:13 2 was on that fridge magnet?

10:41:15 3 A. Yeah, it would have had to have been.

10:41:19 4 Oh, and I think he's a friend of mine on  
10:41:21 5 Facebook, but I don't -- I don't communicate with  
10:41:24 6 him at all on Facebook, other than read his stuff  
10:41:27 7 and he reads stuff that I repost.

10:41:32 8 Q. Had Gary ever retrieved video footage  
10:41:36 9 for you prior to --

10:41:37 10 A. No.

10:41:37 11 Q. -- January 1st, 2017?

10:41:40 12 Did you give Gary any instructions on what  
10:41:48 13 footage you wanted retrieved?

10:41:50 14 A. Yeah.

10:41:51 15 Q. What instructions did you give him?

10:41:53 16 A. I told him Jim -- Mr. Ostrowski --  
10:41:56 17 I said, Jim Ostrowski -- Jim wants everything on  
10:42:00 18 the front of the house that shows the incident from  
10:42:02 19 the time the tenant arrives, until the time the  
10:42:08 20 police leave.

10:42:15 21 Q. Do you know if that footage was  
10:42:18 22 preserved from the time the tenant arrived and the  
10:42:22 23 police leaving?

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10:42:31 1 A. I think so. Yeah, I think so.

10:42:34 2 Q. Are you aware of any footage aside from  
10:42:39 3 the first clip that you've mentioned earlier in  
10:42:43 4 your testimony?

10:42:49 5 A. From those two cameras, the one on the  
10:42:52 6 left that looks straight down, that shows the  
10:42:58 7 police with Earl.

10:43:05 8 Q. Was that footage also retrieved off the  
10:43:07 9 system, if you are aware?

10:43:10 10 A. Yeah, both of those views.

10:43:14 11 Q. Is it your understanding that the  
10:43:15 12 entire footage captured by both of those cameras  
10:43:19 13 from the time that the tenant arrived and when the  
10:43:22 14 police left on January 1st, 2017, was preserved?

10:43:35 15 A. I think it was.

10:43:40 16 Can I articulate here? I think I can help  
10:43:43 17 answer your question here.

10:43:45 18 Q. Let me ask more broadly.

10:43:47 19 A. Okay.

10:43:48 20 Q. Are you aware of any footage that  
10:43:51 21 exists from that date that was not retrieved off  
10:43:54 22 of your Swann system?

10:43:55 23 A. That's more to the point. I know that

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10:43:59 1 there was video footage after the police left of  
10:44:03 2 Jim Ostrowski arriving and Jim Ostrowski leaving,  
10:44:10 3 but I don't know where it is.

10:44:12 4 I have looked and looked and looked, and  
10:44:14 5 I am still looking, but I know I saw that on video,  
10:44:20 6 and I can't find it anywhere.

10:44:26 7 Q. Are you aware of any footage -- strike  
10:44:38 8 that.

10:44:38 9 From the time that your tenant arrives on  
10:44:41 10 Schmarbeck, until the time that the police leave,  
10:44:44 11 are you aware of any footage that is no longer  
10:44:48 12 available from that period of time?

10:44:59 13 A. That's a no with an explanation or  
10:45:03 14 a yes with an explanation.

10:45:07 15 When Gary came back with the stuff on the  
10:45:15 16 disc, he had it on four discs. All the discs were  
10:45:20 17 just copies of each other, he told me.

10:45:25 18 And when I -- when I first was able to get  
10:45:28 19 those discs to work and actually look at them,  
10:45:30 20 there were like clips on there. It wasn't one long  
10:45:34 21 movie. It wasn't one long, uninterrupted movie.  
10:45:40 22 It was just this clip and then there was another  
10:45:42 23 clip and then there was another clip and then there

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10:45:46 1 was another clip.

10:45:51 2 That's what I'm aware. The clips and the  
10:45:54 3 time at the top -- the time at the top looks  
10:45:57 4 different.

10:45:57 5 Q. Are you aware of any footage from that  
10:46:01 6 date and incident that is continuous and extends  
10:46:05 7 for the entire period of time from when the tenant  
10:46:08 8 arrived and the police left?

10:46:09 9 A. Okay. I don't think there is one.

10:46:12 10 The reason I say that is because when  
10:46:16 11 I asked Gary, the video guy, about is there one  
10:46:21 12 long one here, he told me, when he was delivering  
10:46:24 13 the thing and picking up his pay, that that video  
10:46:29 14 clip was so big, that the only way he could get it  
10:46:33 15 off the machine and onto DVD was to make it smaller.

10:46:39 16 Like the two hours from beginning to end or  
10:46:42 17 whatever time there was there, it was just too big  
10:46:44 18 a clip, and he didn't know how to move it around,  
10:46:47 19 other than to do it the way he did it.

10:46:50 20 Q. Are you aware if the continuous footage  
10:46:54 21 from this incident was preserved in any way aside  
10:46:58 22 from --

10:46:58 23 A. No, I'm not.

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10:47:00 1 Q. -- reducing to a disc?

10:47:02 2 A. No.

10:47:02 3 Q. Do you have access to that continuous

10:47:04 4 footage today?

10:47:06 5 A. No. If I find it, you'll be the first

10:47:10 6 to get it.

10:47:11 7 Q. Do you have access to the same Swann

10:47:15 8 DVR system that was in place and recording footage

10:47:19 9 on January 1st, 2017?

10:47:22 10 A. Yeah.

10:47:23 11 Q. Is that Swann DVR system still

10:47:27 12 functioning?

10:47:28 13 A. Yeah. One of the cameras doesn't work.

10:47:32 14 We lost a view.

10:47:34 15 Q. Which camera?

10:47:40 16 A. The one on the front porch, looking to

10:47:43 17 the right. It just stopped working a couple months

10:47:45 18 ago.

10:47:45 19 Q. Do you know when it stopped working?

10:47:47 20 A. Yeah. A couple months ago. I think

10:47:49 21 it's got a short in the wire going to the camera.

10:47:51 22 Q. In the year 2019?

10:47:53 23 A. Oh, yeah. Yes.

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10:47:54 1 Q. Had you ever performed any maintenance  
10:47:56 2 on either the DVR system or the cameras itself?

10:47:59 3 A. No.

10:48:11 4 Q. After -- strike that.

10:48:14 5 In order for Gary to retrieve the footage,  
10:48:18 6 did you have to physically give him the DVR system?

10:48:21 7 A. Yeah.

10:48:22 8 Q. And that system at some point was later  
10:48:24 9 returned to you by Gary?

10:48:25 10 A. Yeah.

10:48:26 11 Q. Were you present at any point when Gary  
10:48:29 12 was retrieving or preserving video footage from  
10:48:34 13 January 1st, 2017?

10:48:35 14 A. No.

10:48:39 15 Q. Did you view any of the footage from  
10:48:42 16 January 1st, 2017, on the DVR system, after it was  
10:48:47 17 returned to you by Gary?

10:49:00 18 A. I don't know.

10:49:00 19 Q. Prior to giving Gary the DVR system,  
10:49:03 20 had you viewed the January 1st, 2017 footage from  
10:49:08 21 the time that your tenant arrived, until when the  
10:49:10 22 police left Schmarbeck Avenue?

10:49:21 23 A. I want to say yes, but I don't think

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10:49:25 1 I looked at it like all the way through, nonstop.

10:49:34 2 I, Rachel, and Earl together looked at it

10:49:42 3 the biggest part of half the day the next day.

10:49:47 4 Q. At some point you became aware that

10:49:52 5 footage was captured from the time your tenant

10:49:55 6 arrived, to when police --

10:49:57 7 A. Yeah.

10:49:58 8 Q. -- left the street.

10:50:00 9 A. Yeah.

10:50:00 10 Q. Okay. Have you ever created any notes,

10:50:05 11 a log, a diary of any sort to reduce to writing

10:50:09 12 what happened on January 1st, 2017?

10:50:14 13 A. Not a diary.

10:50:17 14 Q. What form have you taken notes in?

10:50:19 15 A. I tried to sit and look at the four  
10:50:22 16 clips and tried to figure out what order they go in  
10:50:30 17 and tried to figure out like how long this whole  
10:50:35 18 thing -- how long this whole thing took to happen  
10:50:38 19 to try to make some sense of how long from the time  
10:50:45 20 he got there, until the time the last police car  
10:50:48 21 left, and why did the police leave when they did,  
10:50:56 22 and tried to make sense of that.

10:51:01 23 Q. Did you reduce any of that to writing,

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10:51:03 1 either handwritten or typed?

10:51:05 2 A. It was more that I was just keeping

10:51:07 3 notes on the number of the clock, so it -- no.

10:51:12 4 It wasn't the kind of thing you could understand.

10:51:15 5 I didn't save it.

10:51:20 6 Q. Have you created any notes, a log,

10:51:22 7 a diary to help memorialize any injuries you allege

10:51:26 8 that you suffered from the January 1st, 2017

10:51:28 9 incident?

10:51:35 10 A. No.

10:51:38 11 Q. Sir, how old are you today?

10:51:41 12 A. 59.

10:51:46 13 Q. What is your current height and weight?

10:51:51 14 A. 250, five eleven.

10:51:56 15 Q. What was your approximate height and

10:51:59 16 weight on January 1st, 2017?

10:52:05 17 A. 220, five eleven.

10:52:13 18 Q. Have you been prescribed any contacts

10:52:15 19 or glasses since your 50-h testimony in June of

10:52:18 20 2017?

10:52:20 21 A. No.

10:52:28 22 Q. Do you have any hearing problems?

10:52:40 23 A. Maybe.

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10:52:40 1 Q. Since your testimony in your 50-h in  
10:52:44 2 June of 2017, have you seen any medical provider  
10:52:47 3 for any hearing-related issue?

10:52:50 4 A. No.

10:52:51 5 Q. When you say maybe, what do you mean by  
10:52:53 6 that?

10:52:55 7 A. If there's a crowd, if there's a lot of  
10:52:58 8 noise, there's a lot of background noise, it's real  
10:53:00 9 hard to pick up from the distance of five feet what  
10:53:06 10 somebody's saying unless you watch their mouth.

10:53:08 11 Q. Have you ever seen a medical provider  
10:53:11 12 at all with regard to that issue?

10:53:18 13 A. No.

10:53:19 14 Q. Do you utilize anything to aid your  
10:53:23 15 hearing in those types of situations?

10:53:28 16 A. Rachel bought me two of them \$20  
10:53:33 17 hearing aids, one for each ear, and -- but that was  
10:53:41 18 more a here, I told you so, wear these, than it was  
10:53:45 19 a physician telling me that I couldn't hear.

10:53:49 20 Q. When did she buy those for you?

10:53:53 21 A. Last year.

10:53:56 22 Q. Were you wearing any type of aid on  
10:54:00 23 January 1st, 2017?

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10:54:05 1 A. No.

10:54:12 2 Q. You mentioned earlier that you are

10:54:14 3 married to Rachel?

10:54:15 4 A. No, I'm not. We're not married.

10:54:17 5 Q. Okay. What did you mean by that when

10:54:19 6 you said earlier today that you were married to

10:54:21 7 her?

10:54:24 8 MR. DAVENPORT: I don't think that he said

10:54:25 9 that he was married to her.

10:54:26 10 THE WITNESS: I think I clarified that we're

10:54:28 11 not married earlier today.

10:54:29 12 BY MS. HUGGINS:

10:54:29 13 Q. Okay. Who is Rachel to you then?

10:54:35 14 A. We have three children in common.

10:54:39 15 Q. Have you ever been married before?

10:54:41 16 A. Yes.

10:54:42 17 Q. When did you first get married?

10:54:56 18 A. '90.

10:54:58 19 Q. Who did you marry?

10:54:59 20 A. Danielle Bradley.

10:55:06 21 Q. Are you still married to Ms. Bradley?

10:55:08 22 A. No.

10:55:09 23 Q. When did you get divorced?

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10:55:13 1 A. We had a jury trial on our divorce in  
10:55:17 2 front of Lane in Niagara County in 2000.

10:55:23 3 Q. Do you have any children in common with  
10:55:25 4 Ms. Bradley?

10:55:26 5 A. Three.

10:55:28 6 Q. Which of your children are your  
10:55:32 7 children in common with Ms. Bradley?

10:55:35 8 A. Joelle, Laurel, and Earl.

10:55:41 9 Q. Do you still have any contact with  
10:55:43 10 Ms. Bradley?

10:55:48 11 A. Once a year maybe she'll call and want  
10:55:52 12 to know where Earl is, but no, we don't talk.

10:55:55 13 Q. Have you ever discussed the  
10:55:56 14 January 1st, 2017 incident with Ms. Bradley?

10:56:00 15 A. I haven't.

10:56:07 16 Q. How many children in total do you have,  
10:56:09 17 sir?

10:56:10 18 A. Seven.

10:56:18 19 Q. Your middle child -- forgive me.

10:56:22 20 I forgot your middle child's name. We discussed  
10:56:35 21 Joelle, Laurel, and Earl. Who is your next?

10:56:38 22 A. Kendall.

10:56:39 23 Q. Kendall.

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10:56:40 1 A. Yeah. I have four big ones and three  
10:56:42 2 little ones.

10:56:43 3 Q. Who is the mother of Kendall?

10:56:48 4 A. I want to make sure I get her last  
10:56:50 5 name. I think her name is still Barber. Lisa  
10:56:57 6 Barber.

10:56:58 7 Q. Do you have any contact with  
10:56:59 8 Ms. Barber?

10:57:03 9 A. Not in six or seven years.

10:57:06 10 Q. Ever discuss this January 1st --

10:57:09 11 A. No.

10:57:10 12 Q. -- incident with her? Okay.

10:57:12 13 Were any of your children residing with you  
10:57:14 14 on January 1st, 2017?

10:57:22 15 A. The three little ones were at Rachel's  
10:57:25 16 house at 37, next door. I'm sleeping and staying  
10:57:29 17 over at 33, which is the house I own. Earl was  
10:57:32 18 home. I can't remember whether he -- I know he had  
10:57:39 19 to sleep over at Rachel's on the first floor at 37,  
10:57:42 20 so Earl was staying with Rachel that night. I got  
10:57:48 21 up early and came over.

10:57:55 22 Almost -- almost constantly since this,  
10:57:58 23 though, I've been spending almost all of the time

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10:58:00 1 over at Rachel's because she still worries.

10:58:05 2 Q. When did you stop residing at 33 and  
10:58:09 3 staying at 37?

10:58:10 4 A. Consistently?

10:58:11 5 Q. Consistently.

10:58:17 6 A. I don't know. Eight months ago.

10:58:19 7 A year ago.

10:58:27 8 Q. What caused that change in staying at  
10:58:30 9 33 to then consistently staying --

10:58:32 10 A. Rachel's mental health.

10:58:59 11 Q. -- at 37?

10:58:59 12 Where were Laurel, Joelle, and Kendall  
10:59:03 13 living in January of 2017?

10:59:16 14 A. I don't know. I don't remember.

10:59:17 15 Q. Were they residing in the Buffalo area?

10:59:26 16 A. I want to say Joelle was, but I think  
10:59:30 17 the other two were out of town.

10:59:33 18 Q. Did you ever discuss the January 1st,  
10:59:36 19 2017 incident with Laurel, Joelle, or Kendall?

10:59:40 20 A. No.

10:59:57 21 Q. What properties, if any, do you own on  
11:00:01 22 Schmarbeck Avenue?

11:00:02 23 A. 24, 29, and 33.

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11:00:09 1 Q. What type of property is 24 Schmarbeck?  
11:00:11 2 A. 24 is a double. A traditional 30 by 110.  
11:00:17 3 Q. When you say double, is it like  
11:00:19 4 a lower, upper double?  
11:00:21 5 A. Yeah.  
11:00:24 6 Q. How long have you owned 24 Schmarbeck?  
11:00:32 7 A. I'm guessing to say 2007, but I think  
11:00:34 8 that's kind of accurate.  
11:00:37 9 Q. What type of property is 29 Schmarbeck?  
11:00:40 10 A. It's an empty lot.  
11:00:44 11 Q. Has it always been an empty lot while  
11:00:47 12 you have owned it?  
11:00:48 13 A. Yeah.  
11:00:48 14 Q. And what type of residence -- not  
11:00:50 15 residence -- what type of property is 33 Schmarbeck?  
11:00:54 16 A. It's a single-family home. It's got --  
11:01:00 17 it's got an office in the back, and it's got --  
11:01:10 18 it's got a finished attic and a two bedroom on the  
11:01:14 19 first floor, which if I get rid of the office,  
11:01:17 20 I can make a three bedroom on the first floor. So  
11:01:20 21 it's essentially a double.  
11:01:21 22 Q. Are those rooms that you have described  
11:01:23 23 separate units?

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11:01:26 1 A. They have been since I got it.

11:01:37 2 Q. What sources of income did you have in  
11:01:38 3 January of 2017?

11:01:47 4 A. Two apartment rents -- no. Three  
11:01:50 5 apartment rents. Three apartment rents. I've got  
11:01:53 6 one of Rachel's apartment rents and then the two --  
11:01:59 7 the two rooms I had rented, so there were three  
11:02:01 8 sources.

11:02:02 9 It's not that way anymore but that's what it  
11:02:04 10 was then.

11:02:05 11 Q. The three units that you have described,  
11:02:11 12 does that encompass 24 and 33 Schmarbeck?

11:02:15 13 A. No. That would be the two at 33 and  
11:02:20 14 one of Rachel's units at 41.

11:02:24 15 Q. Was 24 Schmarbeck empty?

11:02:28 16 A. 24 has been a project since the day we  
11:02:32 17 got it. Other things are constantly calling me off  
11:02:38 18 of it, and then I've got to go back to it, and  
11:02:43 19 then --

11:02:46 20 Q. The unit that Rachel owns at  
11:02:47 21 41 Schmarbeck --

11:02:49 22 A. Yeah.

11:02:50 23 Q. -- did you ever reside at 41 Schmarbeck?

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11:02:52 1 A. Yeah.

11:02:52 2 Q. When did you reside there?

11:02:54 3 A. When Rachel got the first building

11:02:57 4 there, we were still undergrads. Rachel and

11:03:01 5 I lived together there, and then on the weekends,

11:03:04 6 the three older kids would come over. They were

11:03:07 7 like eight, nine, and 12. So -- I don't know

11:03:17 8 how -- that was 20 years ago.

11:03:21 9 We did live there I think for six years.

11:03:27 10 Maybe seven.

11:03:28 11 Q. Some time ago, though?

11:03:29 12 A. Oh, yeah. It's a long, long time ago.

11:03:31 13 Q. What type of building is 41 Schmarbeck?

11:03:34 14 A. 41 is identical to 24. They're like

11:03:39 15 mirror images of each other. They're just across

11:03:41 16 the street. It's a traditional Buffalo double.

11:03:46 17 Four bedrooms on the first floor, three bedrooms on

11:03:49 18 the second floor.

11:03:50 19 Q. With the two units being an upper and

11:03:52 20 a lower?

11:03:52 21 A. Yeah. And if you finish the attic,

11:03:55 22 that's another 900 square feet.

11:03:58 23 Q. Aside from the rent that you

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11:04:00 1 were collecting from the two units in 33 and  
11:04:03 2 41 Schmarbeck, did you have any other sources  
11:04:05 3 of income in January of 2017?

11:04:11 4 A. No.

11:04:11 5 Q. Were you doing anything else for work  
11:04:12 6 to help support yourself at that time?

11:04:15 7 A. No.

11:04:18 8 Q. How much rent did you charge for the  
11:04:22 9 units at 33 Schmarbeck?

11:04:35 10 A. I'm going to give you an answer. It's  
11:04:40 11 not gospel. Don't hold me to it. But I can tell  
11:04:43 12 you approximately 405 on the second floor, 525 on  
11:04:50 13 the first floor, and Rachel's unit at 41 upstairs  
11:04:57 14 was 555. So add those together and that was my  
11:05:03 15 monthly income. Gross.

11:05:09 16 Q. Was there anything about the January 1st,  
11:05:12 17 2017 incident that prevented you from collecting  
11:05:15 18 those rents?

11:05:27 19 A. Can you ask that again?

11:05:28 20 Q. Let me ask it a different way.

11:05:31 21 In other words, did the January 1st, 2017  
11:05:33 22 incident cause you to lose any rental income?

11:05:47 23 A. No.

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11:05:48 1 Q. What paperwork, if any, do you keep  
11:05:51 2 regarding the tenants that rent from you?

11:06:07 3 A. Can you explain that? Can you be more  
11:06:09 4 specific with that question?

11:06:10 5 Q. Sure.

11:06:11 6 Did you keep any records on the tenants that  
11:06:14 7 rented from you?

11:06:22 8 A. Okay. The best way to answer that is  
11:06:26 9 I don't have a file cabinet. I have boxes, and  
11:06:30 10 I just put the papers in the boxes.

11:06:36 11 As the kids came along, as the three boys  
11:06:39 12 came into our lives, you have to shed yourself of  
11:06:42 13 that stuff, so you're constantly taking a box,  
11:06:46 14 going through it, and going: Well, I haven't had  
11:06:48 15 this lady for a tenant for eight years. That goes  
11:06:51 16 in the garbage.

11:06:53 17 That's how I can describe my record keeping.

11:06:56 18 Q. Sure.

11:06:57 19 Did you have prospective tenants or tenants  
11:07:00 20 that did indeed rent from you fill out an  
11:07:03 21 application prior to them taking over a unit?

11:07:05 22 A. Yeah.

11:07:05 23 Q. Did you run background checks on your

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11:07:08 1 tenants?

11:07:09 2 A. No. Can't afford to.

11:07:16 3 Q. Who was the tenant or tenants living at

11:07:18 4 33 Schmarbeck on January 1st, 2017?

11:07:25 5 A. At 33? 33 Schmarbeck?

11:07:27 6 Q. 33.

11:07:28 7 A. Mike Wolfe was on the first floor.

11:07:29 8 Q. How long had Mike Wolfe rented from you

11:07:33 9 by January 1st, 2017?

11:07:40 10 A. I want to say he'd been there a year.

11:07:45 11 Q. Did you know Mike Wolfe prior to him

11:07:47 12 becoming a tenant of yours?

11:07:49 13 A. No.

11:07:55 14 Q. Did Mike Wolfe fill out an application

11:07:57 15 for the unit?

11:07:58 16 A. Yeah.

11:07:58 17 Q. Did you have any issues with Mike Wolfe

11:08:01 18 when he was your tenant at 33 Schmarbeck?

11:08:09 19 A. No. Close to the end, maybe a little,

11:08:11 20 but no.

11:08:11 21 He was a Restoration Society referral. We

11:08:15 22 got him through the Restoration Society. At that

11:08:18 23 point, we were getting a lot of people through the

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11:08:21 1 Restoration Society.

11:08:22 2 Q. How does the Restoration Society -- or  
11:08:25 3 how did the Restoration Society refer a tenant to  
11:08:29 4 you in January of 2017?

11:08:31 5 A. Here's the best way I can describe my  
11:08:34 6 understanding of how that happened: When we listed  
11:08:38 7 something, we never list anywhere except on  
11:08:42 8 craigslist because it's free and most people know  
11:08:45 9 how to use it. They can navigate it.

11:08:47 10 Restoration Society has a clubhouse  
11:08:50 11 somewhere in Buffalo where homeless people and  
11:08:52 12 their clients can go and use a computer to look for  
11:08:57 13 apartments. I'm pretty sure that's how Mike found  
11:09:06 14 out about us.

11:09:09 15 And I know he came with Restoration. He  
11:09:12 16 came with -- when he initially established his  
11:09:17 17 tenancy with us, he came with a counselor. And we  
11:09:26 18 became pretty familiar with the counselors, but the  
11:09:32 19 counselors come and go pretty quick there too, so --

11:09:38 20 Q. When did Mike Wolfe move out of the  
11:09:42 21 unit at 33?

11:09:57 22 A. Sometime between January 1st, 2017 and  
11:10:02 23 January 3rd, 2017.

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11:10:05 1 Q. Is there anything about the incident  
11:10:07 2 occurring involving the Buffalo Police Department  
11:10:11 3 on January 1st, 2017, that caused Mike Wolfe to  
11:10:16 4 move out of that unit, if you are aware?

11:10:28 5 THE WITNESS: No. This begs some  
11:10:36 6 explanation here.

11:10:37 7 MR. DAVENPORT: Go for it.

11:10:41 8 BY MS. HUGGINS:

11:10:41 9 Q. Let me ask a more general question.  
11:10:43 10 Why did Mike Wolfe's tenancy with you come to an  
11:10:48 11 end?

11:10:54 12 A. That begs an explanation too.

11:10:56 13 Q. It's an open-ended question.

11:10:57 14 A. All right. All right. Mike was a --  
11:11:06 15 he was a substance abuser who had mental health  
11:11:12 16 issues. His first few months of tenancy, first  
11:11:14 17 five or six or seven months of tenancy were pretty  
11:11:17 18 quiet.

11:11:18 19 He had his son or the guy who represented as  
11:11:21 20 his son, he would come over and stay with him  
11:11:24 21 periodically. That wasn't an issue.

11:11:26 22 About November, we started seeing a fellow  
11:11:31 23 come and he'd stay there for days. And part of --

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11:11:36 1 part of this tenancy is we pay gas, we pay  
11:11:41 2 electric, we give you a washer, stove, dryer  
11:11:44 3 fridge. We pay for everything. Give you free  
11:11:46 4 internet. Everything.

11:11:49 5 If you have another adult move into the  
11:11:51 6 unit, you've got -- they've got to get an  
11:11:54 7 application filled out, they have to be approved,  
11:11:58 8 and you've got to kick in another hundred bucks  
11:12:01 9 a month.

11:12:02 10 I'm allowed to do that because I pay for  
11:12:05 11 everything. The water bill goes up. The electric  
11:12:07 12 goes up. Wear and tear on the unit goes up. But  
11:12:15 13 we don't expect more of a deposit.

11:12:17 14 So I told Mike: What's up with this guy?  
11:12:20 15 Who is he? Where is he coming from? You know,  
11:12:23 16 because it looks like to me, Mike, that he's living  
11:12:26 17 with you. He said, no. He's just coming around.

11:12:30 18 Well, then it became apparent they were  
11:12:32 19 using together, abusing drugs together. And  
11:12:36 20 I said, well, you know, you've got a subsidized  
11:12:42 21 apartment. Restoration is paying for this. Are  
11:12:47 22 you letting Restoration know that this guy's over  
11:12:50 23 here? Because I will if you won't.

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11:12:55 1 By the first week of December, the tenancy  
11:13:00 2 had -- it was circling the drain.

11:13:04 3 Q. You've mentioned November and December.  
11:13:06 4 This is in the year 2017?

11:13:08 5 A. '16.

11:13:09 6 Q. Oh, I'm sorry. 2016?

11:13:11 7 A. '16.

11:13:12 8 Q. Yeah.

11:13:14 9 A. The month immediately before.

11:13:15 10 Q. Right.

11:13:18 11 A. About the -- I'm going to say the 15th  
11:13:21 12 or 16th of December, they disappeared. They were  
11:13:24 13 just gone. And I thought: Wow. I didn't even  
11:13:31 14 have to put a pay or quit or anything or a 90-day  
11:13:35 15 or a 30-day notice on the door. They just  
11:13:37 16 disappeared. Good for me.

11:13:39 17 And then -- but he didn't turn in the keys,  
11:13:44 18 and I'd call him on the phone and say, are you done  
11:13:51 19 over there yet? You know, are you done with the  
11:13:52 20 apartment? Are you moved out? That might have  
11:13:54 21 happened twice that I called him, and he said no.

11:13:57 22 Well, then when he just disappeared -- and  
11:14:01 23 I've had tenants do that too. They just walk away

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11:14:04 1 or they get arrested and you never hear from them.

11:14:09 2 He was gone for about a week, so I started, you

11:14:13 3 know, asking people that lived on the street:

11:14:15 4 Anybody know where Mike is?

11:14:17 5 And somebody told me they're over at the

11:14:26 6 Little Shepherd of the Poor. Some social service

11:14:28 7 agency. I don't know if I got the name right. And

11:14:30 8 I said, what are they doing over there? And the

11:14:34 9 guy that had been over there in the daytime and saw

11:14:37 10 Mike over there said, they're getting the Christmas

11:14:40 11 goodies. So I said, oh.

11:14:44 12 So I called up Little Shepherd and I said,

11:14:47 13 is Mike Wolfe there? And they said, who is this?

11:14:50 14 And I told them: This is his landlord over here on

11:14:55 15 Schmarbeck, and I'm -- is he staying with you guys?

11:14:58 16 Has he moved in with you guys? Because they house

11:15:01 17 them overnight there. And they said, yeah.

11:15:04 18 And I said, well, are you aware that he's

11:15:07 19 got a subsidized apartment over here on Schmarbeck?

11:15:10 20 And he said, no. And he said, who's it subsidized

11:15:14 21 through? I said, Restoration. So they said, well,

11:15:18 22 could you have Restoration call us? And I said,

11:15:20 23 I don't want to get in the middle here. Why don't

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11:15:23 1 you call Restoration. And he said, yeah, we all  
11:15:26 2 got to get together and figure this out. And I said,  
11:15:29 3 well, are you going to keep him? Is he moved in  
11:15:32 4 permanently?

11:15:33 5 Because if you can't talk to the tenant, you  
11:15:35 6 have to figure out what's going on with the  
11:15:37 7 building somehow.

11:15:41 8 And he said, well, we need to get on the  
11:15:43 9 same page with Restoration. We need to find out  
11:15:46 10 what's going on.

11:15:48 11 Q. Was there ultimately any conversation  
11:15:50 12 with Mike about this?

11:15:53 13 A. No. No. He called me back, and he  
11:15:58 14 said, they have -- he's over here with a friend,  
11:16:02 15 which we kind of deduced was the fellow he had  
11:16:05 16 staying at the apartment with him on and off, that  
11:16:11 17 were drug abusing together.

11:16:18 18 And I think it was around the 28th I talked  
11:16:22 19 to them. It was just after Christmas. And I says,  
11:16:25 20 is he going to stay there with you? And they said,  
11:16:28 21 well, he's got one more night. He's able to stay  
11:16:33 22 here for ten days. And under the circumstances, we  
11:16:37 23 wish you had called us earlier and we would have

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11:16:39 1 told him go home to Schmarbeck because we needed  
11:16:42 2 the bed.

11:16:43 3 And I said, well, I just wanted to know  
11:16:45 4 whether he had permanent housing, he's got  
11:16:47 5 something else. Because it's always easier, if the  
11:16:49 6 tenancy is going south, to make sure somebody has  
11:16:52 7 a place to land, because they'll go out a whole lot  
11:16:55 8 easier if they've got somewhere to go.

11:16:57 9 And like I said, we've dealt with a lot of  
11:16:59 10 people in that situation before. A lot of our  
11:17:01 11 tenants are problematic.

11:17:02 12 Q. Did you ever initiate any housing court  
11:17:04 13 or other legal proceedings involving Mike?

11:17:07 14 A. I don't know if I mailed it and nailed  
11:17:13 15 it. I think Earl might have nailed and mailed it  
11:17:17 16 for me on the 30th. Because Earl doesn't have  
11:17:21 17 a physical interest in 33, he's able to be  
11:17:26 18 a process server.

11:17:27 19 I can't do my own process serving on my own  
11:17:30 20 buildings. I've got to get somebody to do it. And  
11:17:32 21 I'd prefer to get somebody that I don't have to  
11:17:34 22 pay.

11:17:34 23 Q. What service -- what process did you

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11:17:38 1 serve on Mike?

11:17:38 2 A. Well, I know we nailed on the door. We  
11:17:41 3 gave him a 30-day notice.

11:17:44 4 Q. Of eviction?

11:17:45 5 A. Yeah. Which is what you have to do to  
11:17:46 6 start the process, I think.

11:17:48 7 Q. Did you do any other legal proceedings  
11:17:51 8 involving Mike and the unit at 33?

11:18:01 9 A. No.

11:18:01 10 Q. Did you ever call the police with  
11:18:02 11 regard to any issues with Mike at 33?

11:18:06 12 A. I don't remember.

11:18:21 13 Q. Did you ever come to learn the identity  
11:18:23 14 of the person who was staying with Mike?

11:18:26 15 A. No. Not -- I might have known for  
11:18:31 16 a second or thought I knew for a second but not  
11:18:33 17 now.

11:18:33 18 Q. Did Mike ever discuss with you any  
11:18:36 19 issues he had with the person staying with him  
11:18:39 20 at 33?

11:18:50 21 A. I don't want to trash anybody too bad,  
11:18:51 22 but Mike was always -- always had something that he  
11:18:54 23 wanted you to listen to. Mike always had some

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11:18:57 1 story.

11:19:03 2 Q. Did he ever request that you help  
11:19:05 3 remove that person from 33?

11:19:08 4 A. If he did, I know exactly what I would  
11:19:10 5 have told him, but I don't remember him doing that,  
11:19:13 6 no.

11:19:27 7 Q. Do you have any contact with Mike Wolfe  
11:19:30 8 presently?

11:19:32 9 A. No.

11:19:34 10 Q. When was your last contact with Mike  
11:19:42 11 Wolfe?

11:19:42 12 A. During one of my court appearances in  
11:19:46 13 City Court on these criminal charges around this  
11:19:57 14 false arrest, I was in the hallway, and Mike Wolfe  
11:20:01 15 walked into the large area up in the criminal court  
11:20:07 16 city building over there, and I noticed him, but he  
11:20:12 17 didn't notice me.

11:20:14 18 Within about 15 minutes he walked into  
11:20:18 19 a court room on that floor. My case hadn't been  
11:20:23 20 called yet, so I went in and listened and saw that  
11:20:28 21 Mike was involved in -- he was in a raid at a crack  
11:20:31 22 house and had been swept up in a raid.

11:20:34 23 This was three or four or five months later,

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11:20:40 1 after January, so it would have been around June or  
11:20:42 2 July. Something like that.

11:20:46 3 And after I learned that, I went back and  
11:20:48 4 sat in the hallway for my case to get called, and  
11:20:50 5 Mike came out of the court room after his case was  
11:20:53 6 called, and he walked over and said hello. And  
11:20:56 7 I really was kind of shy to talk to him, and I just  
11:21:00 8 kind of acknowledged that he was standing there.

11:21:05 9 And he said, do you have something going on  
11:21:08 10 here? And I was real vague and said, there's  
11:21:13 11 always something going on in this building, Mike.  
11:21:16 12 He just kind of laughed.

11:21:19 13 But that was the last time I laid eyes on  
11:21:21 14 Mike Wolfe.

11:21:22 15 Q. Have you ever discussed the  
11:21:24 16 January 1st, 2017 incident with the Buffalo  
11:21:27 17 Police Department with Mike?

11:21:29 18 A. No.

11:21:31 19 Q. Are you aware if Mike witnessed any  
11:21:34 20 portion of your interaction with the Buffalo police  
11:21:38 21 officers on January 1st, 2017?

11:21:54 22 A. No, but they're going to inform you  
11:21:57 23 of -- because the way I answer this might infer

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11:21:59 1 that he did.

11:22:02 2 When I was not home -- during that January  
11:22:08 3 1st, 2017 time, when I wasn't at home, Rachel got  
11:22:14 4 30 calls from him on his cell phone. Rachel said,  
11:22:20 5 he's been calling here -- when I got home that day,  
11:22:23 6 she said, he's been calling here all day.

11:22:25 7 Q. Did she actually speak with him?

11:22:27 8 A. No. Rachel was smart enough to not --  
11:22:30 9 just not answer the phone, or I can't talk now.

11:22:37 10 Because Rachel being home alone, if Mike  
11:22:40 11 knew I wasn't there, could have been problematic.  
11:22:46 12 If Mike and his drug-abusing friend were over  
11:22:49 13 there, knowing that Rachel was home alone with  
11:22:51 14 three kids, that could have become problematic for  
11:22:55 15 her.

11:22:55 16 Q. So other than him, Mike, repeatedly  
11:22:57 17 calling Rachel that day, do you have any other  
11:22:59 18 basis for thinking that maybe Mike saw any of your  
11:23:02 19 interaction with the officers --

11:23:04 20 A. No.

11:23:05 21 Q. -- on January 1st?

11:23:07 22 A. No. He was hot to talk to me about  
11:23:09 23 something that day. And it wasn't -- and during

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11:23:13 1 those times when he called Rachel, he told Rachel:  
11:23:15 2 I'm done with the apartment. I'm leaving. Tell  
11:23:19 3 Jim to come get the key.

11:23:21 4 Q. Was that information left via voice-mail  
11:23:24 5 message?

11:23:25 6 A. Probably.

11:23:28 7 Q. Did any of those 30 phone calls occur  
11:23:30 8 prior to your interaction with the officers?

11:23:34 9 A. No. Mike never called that morning or  
11:23:38 10 the day before, for that matter. Or the day  
11:23:42 11 before.

11:23:43 12 After -- after I had communicated with the  
11:23:45 13 Little Portions Friary about Mike, other than maybe  
11:23:50 14 seeing him on the -- maybe the 28th, very briefly,  
11:23:55 15 I never saw him until the morning of the 1st.

11:23:58 16 Q. Did you have any conversation with Mike  
11:24:01 17 either in the days leading up to January 1st or on  
11:24:04 18 January 1st, prior to your interaction with the  
11:24:07 19 Buffalo Police Department?

11:24:08 20 A. No.

11:24:12 21 Q. Sir, I understand you were originally  
11:24:14 22 born in Ohio?

11:24:15 23 A. Yeah.

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11:24:15 1 Q. Did you attend any schooling in Ohio?

11:24:22 2 A. Yes.

11:24:23 3 Q. What school -- schooling did you attend

11:24:26 4 in Ohio?

11:24:30 5 A. I went to Chase Elementary School to

11:24:36 6 the third grade. I went to -- these are all in

11:24:38 7 Cincinnati. I went to Mount Airy Elementary School

11:24:41 8 in the third grade. I went to Clovernook

11:24:46 9 Elementary School for fourth, fifth, and sixth,

11:24:55 10 about two weeks of seventh grade. North College

11:24:58 11 Hill Junior High. That's it.

11:25:01 12 Q. Did you graduate high school?

11:25:02 13 A. No.

11:25:03 14 Q. What was the last grade that you

11:25:05 15 attended in your schooling in Ohio that you've just

11:25:09 16 described?

11:25:09 17 A. Seventh.

11:25:10 18 Q. Why did you drop out?

11:25:12 19 Did you drop out?

11:25:13 20 A. Yeah. I was shining shoes. I was

11:25:15 21 making money.

11:25:16 22 Q. Where in Ohio did you obtain your GED?

11:25:25 23 A. I can't remember. It's on the GED. It

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11:25:28 1 says where I got it. It was in Cincinnati, in  
11:25:31 2 1978.

11:25:31 3 Q. 1978.

11:25:33 4 I understand you have an urban planning  
11:25:40 5 degree from the University of Buffalo. Have you  
11:25:44 6 gotten any additional degrees since you obtained  
11:25:47 7 the urban planning degree?

11:25:50 8 A. No.

11:25:52 9 Q. Any additional schooling after that?

11:25:58 10 A. No.

11:25:58 11 Q. Have you ever worked in the field of  
11:26:01 12 urban planning?

11:26:02 13 A. Not on a bet.

11:26:05 14 Q. What was your most recent employment  
11:26:09 15 outside of the rental units that you own?

11:26:17 16 A. I am -- okay. The last three jobs  
11:26:19 17 I had for a dollar bill.

11:26:22 18 Q. You don't even have to go that far for  
11:26:25 19 three. I'm just asking the most recent.

11:26:27 20 A. Okay. Well, it's easy. I worked for  
11:26:32 21 G&B Paving for six years when I was married with  
11:26:40 22 Danielle Bradley. I got -- G&B closed, and  
11:26:46 23 I worked for a different paver for one season.

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11:26:51 1 And at the end of the season, my back was  
11:26:53 2 hurting, so I had -- I could -- within about  
11:26:58 3 eight months, I could go back to work, and I had  
11:27:00 4 a schwannoma removed -- schwannoma tumor removed  
11:27:03 5 from my back.

11:27:08 6 I'm going to jump ahead. As an undergrad at  
11:27:13 7 NCCC, I had two work study jobs. For like four  
11:27:18 8 days I had one and for like a week I had another,  
11:27:23 9 and I couldn't do either one of them, so that  
11:27:25 10 didn't work out. And that's it.

11:27:28 11 Q. Your work at the two paving companies  
11:27:31 12 that you've mentioned, was that as a laborer?

11:27:33 13 A. Yeah.

11:27:34 14 Q. Was there any type of accident or  
11:27:36 15 injury that caused the back pain you mentioned?

11:27:39 16 A. No.

11:27:40 17 Q. Okay. When did you first start  
11:27:42 18 experiencing the back pain?

11:27:44 19 A. That last year I was working.

11:27:49 20 Q. Do you recall what year that was?

11:27:51 21 A. I really want to say '97, '98.

11:27:56 22 Q. What year was your surgery?

11:27:57 23 A. I think it was '98.

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11:28:01 1 Q. Have you -- in the years after 1998,  
11:28:07 2 have you continued to receive medical treatment for  
11:28:09 3 either pain to your back or for the tumor?

11:28:11 4 A. I did until I realized that was going  
11:28:14 5 no place. I think I chased that squirrel up the  
11:28:20 6 tree for maybe two or three years trying to figure  
11:28:22 7 out how to get rid of it hurting still.

11:28:26 8 My problem was probably that I didn't get  
11:28:28 9 the right kind of rehab after the schwannoma was  
11:28:33 10 removed and everything kind of got stiff back  
11:28:35 11 there.

11:28:36 12 And I was essentially told sometimes you  
11:28:37 13 come out of those surgeries and you're fine,  
11:28:39 14 sometimes you come out and you're not. If you  
11:28:41 15 can't do what you used to do, you're one of the  
11:28:44 16 cannots.

11:28:45 17 Q. What were the things that you were not  
11:28:49 18 able to do after that surgery?

11:28:50 19 A. Well, I wasn't pushing full barrels of  
11:28:54 20 blacktop anywhere, and I wasn't working on my knees  
11:28:57 21 finishing flatwork concrete anymore.

11:28:59 22 Q. Fair to say that general labor type  
11:29:01 23 work in the construction fields you are unable to

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11:29:04 1 do after that surgery?

11:29:05 2 A. No. The kind of labor I did in the  
11:29:07 3 construction field required a 23-year-old back, and  
11:29:14 4 I didn't have one.

11:29:19 5 You can work -- you can work hard or you can  
11:29:23 6 work smart. Well, at that point in my life, I was  
11:29:26 7 working hard, and that's why I got paid was  
11:29:31 8 because, you know, you can put seven wheelbarrows,  
11:29:36 9 which is a ton of blacktop, on the ground here,  
11:29:39 10 there, here, there, here, there, and keep doing  
11:29:41 11 that all day long. That's working hard. It's not  
11:29:44 12 working smart.

11:29:45 13 So what I was doing before the surgery was  
11:29:48 14 I was working hard, and you can't work hard -- you  
11:29:53 15 can't work smart to work hard. You can't do it.  
11:29:57 16 Or I couldn't then.

11:29:59 17 Q. When did you stop treating for the back  
11:30:02 18 tumor?

11:30:10 19 A. Well, I know I checked in and out with  
11:30:17 20 the neurologist who took it out, and I think I saw  
11:30:21 21 him five or six times after the operation, and that  
11:30:27 22 was it.

11:30:27 23 Q. So would it be sometime in 1999 that

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11:30:30 1 you stopped treating for those issues with your  
11:30:32 2 back?

11:30:42 3 A. It would be safe to say.

11:30:58 4 Q. Do you have any certificate or did you  
11:31:02 5 graduate from the program you attended at American  
11:31:06 6 Institute for Paralegal Studies in Cincinnati?

11:31:09 7 A. If I do -- if I did, I have no clue  
11:31:11 8 where it is.

11:31:11 9 Q. Did you ever work in the legal field?

11:31:13 10 A. No. I had job offers in the legal  
11:31:16 11 field, but no.

11:31:17 12 Q. Have you ever received any schooling or  
11:31:20 13 training in the medical field?

11:31:27 14 A. As an undergrad at Niagara County  
11:31:30 15 Community College, I took the lifesaving course.

11:31:36 16 Q. Like a CPR-type certification?

11:31:38 17 A. Yeah. Yeah.

11:31:40 18 Q. Any --

11:31:41 19 A. I don't know if I have a certification  
11:31:42 20 in that either.

11:31:43 21 Q. Any other medical treatment -- excuse  
11:31:45 22 me -- medical training beyond that course at NCCC?

11:31:51 23 A. No. Not that I know.

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11:31:53 1 Q. When did you have that course?

11:31:59 2 A. 2003, maybe.

11:32:05 3 Q. Aside from the collecting of the rents  
11:32:08 4 for the Schmarbeck units, did you have any other  
11:32:13 5 duties or responsibilities as a part of the  
11:32:17 6 landlord for those properties in January of 2017?

11:32:27 7 A. Can you ask that again?

11:32:30 8 Q. Did you do anything beyond collecting  
11:32:31 9 rent on those units in January of 2017, as the  
11:32:37 10 landlord?

11:32:41 11 A. You mean to maintain the buildings?

11:32:43 12 Work on the buildings? Is that what you mean?

11:32:45 13 Q. It's a broad and open-ended question.  
11:32:47 14 If that's what you did.

11:32:48 15 A. Yeah. Yeah. Anything that's ever got  
11:32:53 16 fixed, except that roof on 24, the recent reroof,  
11:33:03 17 at any of those buildings, hers or mine, I did the  
11:33:06 18 work on it.

11:33:08 19 Q. Was there anything about the  
11:33:11 20 January 1st, 2017 incident that prevented you from  
11:33:13 21 doing any maintenance to the units that you acted  
11:33:16 22 as the landlord for?

11:33:29 23 A. Yeah. Want me to tell you?

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11:33:33 1 Q. What specifically were you unable to do  
11:33:35 2 as a result of that incident?

11:33:36 3 A. Everything slows down and takes longer.  
11:33:45 4 I can't do high work at all hardly. I can get on  
11:33:48 5 a ladder, but I don't feel confident that I can  
11:34:00 6 hold on to the ladder with both hands. I've got to  
11:34:02 7 hold on to the ladder with both hands now.

11:34:05 8 Q. Prior to the January 1st, 2017  
11:34:08 9 incident, were you doing maintenance on a ladder to  
11:34:11 10 any of those units?

11:34:12 11 A. Yeah. I was cleaning gutters every  
11:34:14 12 year. I was -- if anything leaked, I fixed the  
11:34:19 13 roof. If we had to hang aerials for TVs, I was on  
11:34:26 14 the ladder. I don't go up more than about six feet  
11:34:32 15 anymore. It's just -- if I'm going to be, you  
11:34:35 16 know, using hand tools.

11:34:36 17 It's the hand tools. That's the problem.  
11:34:40 18 If I'm holding on to the roof and I'm nailing like  
11:34:44 19 this, I've lost hammers. My hands have let go.  
11:34:49 20 Just like that, they let go. And I don't want to  
11:34:53 21 be up high.

11:34:54 22 And I definitely don't want to work with  
11:34:55 23 nobody up high, because if I'm up high and

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11:34:58 1 something goes wrong --

11:35:04 2 Q. Have you incurred any expenses as  
11:35:06 3 a result of your inability to do that maintenance  
11:35:09 4 that requires a ladder on these units?

11:35:11 5 A. Yeah. There -- okay. It's not just  
11:35:18 6 limited to the ladder either.

11:35:20 7 Q. Why don't we stick with the question  
11:35:22 8 I just asked --

11:35:22 9 A. Okay.

11:35:23 10 Q. -- and then we can broaden it out.

11:35:25 11 A. I had to pay a crew to do the roof over  
11:35:28 12 at 24. The last -- the rolled roof and the deck  
11:35:35 13 I did myself -- by myself on that building, but  
11:35:40 14 I couldn't do it.

11:35:42 15 Q. Had you previously done roofing work at  
11:35:45 16 any of your units prior to the January 1st, 2017  
11:35:48 17 incident?

11:35:48 18 A. Yeah. I'm the guy that put the new  
11:35:51 19 deck on 24 on that side of the house.

11:35:53 20 Q. My question was roofing prior to the  
11:35:56 21 incident.

11:35:56 22 A. Yeah. The deck of the roof is what you  
11:35:59 23 put on the roof before you put the shingles on it.

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11:36:05 1 The four-by-eight sheets, I hauled them up by myself.  
11:36:09 2 I did all that work by myself. I ripped the roof  
11:36:12 3 off by myself. I did a complete tear-off on that  
11:36:16 4 whole side of 24.

11:36:18 5 And that rolled roofing wore out, so I needed  
11:36:22 6 another roof on it, and we were going to put the  
11:36:24 7 shingles on that new deck that was underneath, and  
11:36:27 8 I couldn't do it.

11:36:28 9 Q. When did you hire a crew to complete  
11:36:31 10 that roofing work on 24?

11:36:32 11 A. I don't remember the date. I could  
11:36:34 12 find it out at some other date. I've got receipts.  
11:36:38 13 I've got a receipt.

11:36:40 14 Q. Any other expenses you have had as  
11:36:42 15 a result of your inability to do ladder -- what's  
11:36:48 16 called ladder maintenance, if that makes sense?

11:36:50 17 A. I couldn't do -- this is -- no.

11:37:06 18 Q. Any other aspects of the maintenance to  
11:37:08 19 the units that you have been unable to complete as  
11:37:11 20 a result of the incident on January 1st, 2017?

11:37:14 21 A. Yeah. The area below the front porch  
11:37:21 22 at 37 was stuccoed. I couldn't -- I couldn't hold  
11:37:28 23 a trowel. I couldn't use a trowel to put the

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11:37:30 1 stucco on, so that job got hired out. And that was  
11:37:35 2 ground work. That was standing flat on your feet,  
11:37:38 3 but you had to use a trowel a lot, and you use  
11:37:41 4 about an eight-by-four trowel.

11:37:43 5 Q. When did you hire someone to do that  
11:37:45 6 work?

11:37:48 7 A. This past summer.

11:37:50 8 Q. Summer of 2019?

11:37:53 9 A. Yeah. Yeah. It was spring. Spring.  
11:37:57 10 I think I got it done in the spring.

11:37:59 11 Q. The issues that you've identified with  
11:38:01 12 doing maintenance while on a ladder and with regard  
11:38:06 13 to the front porch work, you've identified your  
11:38:09 14 hands as being the issue.

11:38:13 15 A. The wrists.

11:38:14 16 Q. What about your -- first off, is it  
11:38:17 17 both your hands?

11:38:17 18 A. I'm right-handed. It's both of my  
11:38:20 19 hands, but the right is more pronounced than the  
11:38:23 20 left.

11:38:27 21 Q. What specifically do you experience to  
11:38:29 22 your hands that causes difficulty in this  
11:38:33 23 maintenance work?

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11:38:34 1           A. I don't have any confidence in being  
11:38:37 2 able to hold anything and work with it. I used to  
11:38:44 3 be one of the best painters I know. I can draw  
11:38:46 4 a line forever, and I could.

11:38:52 5           A six-room apartment, you could knock it out  
11:38:55 6 in three days by yourself. Well, now it takes me  
11:38:58 7 ten days to do that because I'm dropping the  
11:39:01 8 paintbrush. I've got to get down off the ladder to  
11:39:03 9 get the paintbrush again.

11:39:05 10          I don't know when it's not going to work.

11:39:09 11          Q. When you say it's not going to work and  
11:39:11 12 dropping things, is that the extent of the issues  
11:39:13 13 you have with your hand is you have an inability to  
11:39:17 14 hold objects?

11:39:17 15          A. With confidence.

11:39:25 16          This happened to me -- can I keep talking or  
11:39:27 17 not?

11:39:28 18          Q. How long have you experienced  
11:39:31 19 difficulty with your ability to hold objects in  
11:39:34 20 both of your hands?

11:39:40 21          A. Since January 1st, 2017.

11:39:41 22          Q. Has there been any improvement or  
11:39:46 23 change in this difficulty with holding objects

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11:39:52 1 since January 1st, 2017, to the present?

11:40:02 2 A. I'm just more aware of it. I think it  
11:40:06 3 was about the same the whole time, but I just think  
11:40:09 4 the further I get away from January of '17, the  
11:40:17 5 more I notice like it's still doing it, it's still  
11:40:20 6 doing it. That's what I mean.

11:40:24 7 Q. Are you seeing any medical provider  
11:40:28 8 specific to these issues with your hands?

11:40:30 9 A. No.

11:40:32 10 Q. Why not?

11:40:38 11 A. I don't have the money.

11:40:44 12 Q. Have you ever described the issues that  
11:40:48 13 you have with your hands to any medical provider?

11:40:50 14 A. Yeah.

11:40:51 15 Q. Who have you described these issues to?

11:40:53 16 A. I'll start with that primary that I saw  
11:40:56 17 at 1500 Broadway about ten days into the month of  
11:41:09 18 January in 2017, and then any primary that I have  
11:41:12 19 since then.

11:41:14 20 Khan. Dr. Khan was at Family Practice.

11:41:17 21 I saw him probably for a year. But I know what  
11:41:25 22 their responses always seem to be to me.

11:41:28 23 Q. So my question right now is just: What

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11:41:30 1 medical providers have you discussed the issues  
11:41:32 2 with your hands with?

11:41:36 3 So we've mentioned the --

11:41:36 4 A. Yeah. Just those two.

11:41:37 5 Q. -- primary on Broadway and Dr. Khan?

11:41:39 6 A. Yeah.

11:41:41 7 Q. Just those two?

11:41:42 8 A. And -- and ECMC on the morning.

11:41:45 9 Q. When did you first notice issues with  
11:41:49 10 holding objects in your hands?

11:41:54 11 A. Right after it happened. Particularly  
11:41:57 12 with my right hand, because I do a lot with my  
11:42:00 13 right hand.

11:42:00 14 Q. When you say, right after it happened,  
11:42:02 15 are you referring to January 1st, 2017?

11:42:03 16 A. Yes, ma'am.

11:42:07 17 Q. Are you able to write? Handwrite?

11:42:14 18 A. Yeah. Yeah. I can sign my name, and  
11:42:17 19 I can print. Yeah, I know how to do that.

11:42:19 20 Q. Do you experience any difficulty  
11:42:21 21 handwriting?

11:42:22 22 A. I ain't going to do it long. I'm going  
11:42:25 23 to put the pen down after a very short time. But

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11:42:29 1 since I've been in college, almost everything is on  
11:42:32 2 a typewriter.

11:42:34 3 Q. Fair enough.

11:42:35 4 I would like to return back to your injuries  
11:42:38 5 a little bit later, but I think where we -- before  
11:42:41 6 we got diverted to it, I asked if there was  
11:42:44 7 anything about the January 1st, 2017 incident that  
11:42:46 8 prevented you from doing maintenance as a landlord  
11:42:49 9 on your properties.

11:42:51 10 Have we discussed all of those issues? The  
11:42:56 11 ladder work and then the work on the front porch of  
11:43:00 12 37?

11:43:07 13 A. Yeah. And the extended time it takes  
11:43:10 14 to get stuff done now compared with -- yeah.

11:43:13 15 Q. Aside from those things, is there any  
11:43:16 16 other manner in which you've been prevented from  
11:43:19 17 completing your duties as a landlord --

11:43:21 18 A. I'm going to say no.

11:43:25 19 Q. -- as a result of this incident?

11:43:26 20 A. I'm going to say no.

11:43:28 21 Q. Aside from your rental properties, do  
11:43:31 22 you have any other employment today?

11:43:33 23 A. No.

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11:43:41 1 Q. Between January 1st, 2017 and today,  
11:43:42 2 were you employed anywhere else other than as  
11:43:44 3 a landlord?

11:43:45 4 A. No.

11:43:52 5 Q. Prior to January 1st, 2017, had you  
11:43:54 6 ever encountered any of the officers who you  
11:44:02 7 encountered on January 1st, 2017?

11:44:04 8 A. I don't know.

11:44:06 9 Q. Since January 1st, 2017, have you  
11:44:09 10 encountered any of those officers?

11:44:10 11 A. I don't think so.

11:44:16 12 Q. Again, I'm trying not to cover the  
11:44:19 13 same --

11:44:19 14 A. Oh, McDonald's. Hold -- you asked --  
11:44:24 15 the last question, can you repeat your last  
11:44:26 16 question?

11:44:26 17 MS. HUGGINS: Sure.

11:44:27 18 Do you mind reading it back?

11:44:27 19 (The above-requested portion was then read  
11:44:46 20 by the reporter.)

11:44:46 21 THE WITNESS: McDonald's on Niagara Street,  
11:44:50 22 Rachel and me took the kids there. I went in and  
11:44:52 23 got the food, and I think either one of the --

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11:44:59 1 there was a male and a female officer in there, and  
11:45:03 2 when I went over -- Rachel's out in the parking lot  
11:45:09 3 in the car with the kids, and she recognized --  
11:45:15 4 when I was -- I'll come back to that in a second.

11:45:18 5           When I was in getting the food, the two  
11:45:21 6 officers were talking to each other, and the one  
11:45:23 7 officer said, that's him. And when I turned around  
11:45:27 8 and looked, they were five or six feet away from  
11:45:33 9 me.

11:45:34 10          I think it was one of the female officers or  
11:45:36 11 it might have been the male officer that said it,  
11:45:39 12 but I know one of them two policemen had something  
11:45:44 13 to do with this thing on Schmarbeck that day,  
11:45:47 14 because when I came -- when I came out and crossed  
11:45:50 15 the parking lot and got in, Rachel said to me: Did  
11:45:54 16 you see them? And I said, the two that were in  
11:45:57 17 there? And she said, yeah. And I said, yeah.  
11:46:01 18 They were talking behind me, and I went to turn  
11:46:04 19 around and look at them, and they were kind of  
11:46:06 20 acting kind of strange.

11:46:08 21          We're convinced that somebody in that  
11:46:10 22 McDonald's, but no, we didn't talk to each other,  
11:46:15 23 there was no confrontation or anything like that,

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11:46:17 1 but I think we might have ran into one of them one  
11:46:20 2 day over at McDonald's.

11:46:21 3 BY MS. HUGGINS:

11:46:21 4 Q. Did you yourself recognize either  
11:46:23 5 of those officers at the McDonald's?

11:46:29 6 A. No, but I could just -- I knew  
11:46:31 7 what I heard going on behind me, and it was  
11:46:35 8 like: I think that's one of the police.

11:46:38 9 Q. When was that?

11:46:42 10 A. Better than two years ago.

11:46:44 11 Q. Are you referring to the McDonald's on  
11:46:46 12 Niagara near Virginia?

11:46:48 13 A. Yeah.

11:46:52 14 Q. How long have you been in a relationship  
11:46:54 15 with Rachel?

11:47:00 16 A. 16 years.

11:47:12 17 Q. I want to quickly update some of your  
11:47:15 18 testimony on the 50-h.

11:47:16 19 Any bankruptcies since your testimony on  
11:47:18 20 June 27, 2017?

11:47:19 21 A. No.

11:47:20 22 Q. Any military service since your  
11:47:23 23 testimony in your 50-h?

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11:47:24 1 A. No.

11:47:25 2 Q. Any additional education or training

11:47:28 3 after you testified in your 50-h on June 27th,

11:47:32 4 2017?

11:47:32 5 A. No.

11:47:40 6 Q. Do you recall the day of the week that

11:47:43 7 January 1st, 2017 was?

11:47:45 8 A. No.

11:47:47 9 Q. Do you recall what you did the night

11:47:49 10 prior?

11:47:53 11 A. New Year's Eve?

11:47:54 12 Q. On New Year's Eve, December 31st.

11:47:57 13 A. Yeah. The same thing we do every year.

11:47:59 14 We stay at home.

11:48:00 15 Q. Do you recall what time you went to

11:48:01 16 bed?

11:48:07 17 A. I don't want to get that New Year's Eve

11:48:10 18 confused with another New Year's Eve, but I think

11:48:12 19 I fell asleep and Rachel was looking out the front

11:48:16 20 window at the Electric Tower, because you can see

11:48:18 21 the fireworks going off from our house.

11:48:25 22 But when I got up and went home, it was

11:48:27 23 probably 2 o'clock. She was sleeping.

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11:48:30 1 Q. Do you -- at that time in January --  
11:48:33 2 well, in December of 2016 and January of 2017, you  
11:48:38 3 and Rachel were sleeping in separate residences?

11:48:41 4 A. Yeah. She had a hospitalization,  
11:48:53 5 I think it was in '15 -- '16? '15 or '16 -- and  
11:49:02 6 she wanted to live by herself, so she moved into  
11:49:09 7 37, and I would sleep between 33 and 37, if she had  
11:49:14 8 a bad night and she said, come over here.

11:49:16 9 Q. Where did you wake up the morning of  
11:49:19 10 January 1st, 2017?

11:49:23 11 A. I was at 33. I was sleeping in  
11:49:25 12 a barber chair.

11:49:28 13 Q. In the 24 hours prior to your  
11:49:31 14 interaction with the Buffalo police officers on  
11:49:34 15 January 1st, did you consume any drugs or alcohol?

11:49:38 16 A. No.

11:49:38 17 Q. Did you consume any marijuana?

11:49:45 18 A. No.

11:49:48 19 Q. Did you skip taking any medications  
11:49:50 20 that you were prescribed within that --

11:49:52 21 A. No.

11:49:53 22 Q. -- 24-hour period?

11:49:55 23 A. No.

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11:49:59 1 Q. Was anyone present at 33 when you woke  
11:50:01 2 up on January 1st?

11:50:04 3 A. No.

11:50:05 4 Q. What did you do when you woke up?

11:50:10 5 A. Got my shoes on and went next door to  
11:50:13 6 see if Earl was awake and Rachel and the boys.

11:50:16 7 Q. Was Earl staying in Rachel's unit on --  
11:50:20 8 at that time period?

11:50:21 9 A. I think Earl was downstairs in the  
11:50:23 10 first bedroom.

11:50:24 11 See, 37, where Rachel lived then, it's  
11:50:29 12 a double, but she has both units. She uses the  
11:50:33 13 whole house. Downstairs, there's a front bedroom  
11:50:37 14 downstairs, which has a bed in it, and when Earl  
11:50:40 15 comes over, Earl usually sleeps there.

11:50:45 16 There's Rachel and the three little boys,  
11:50:48 17 they were in cribs then -- I'm pretty sure they  
11:50:50 18 were still in cribs -- and they're all up on the  
11:50:54 19 second floor.

11:50:55 20 I have a room in the back on the second  
11:50:57 21 floor at 37 that has a bed in it. And then I've  
11:51:00 22 got the office that's got a barber chair. I can go  
11:51:04 23 over there. I've got two mats in the back, if I want

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11:51:08 1 to lay down.

11:51:09 2 . But if I just go over there and turn on the  
11:51:11 3 TV and go to sleep, it gives her a sense of she's  
11:51:15 4 living by herself for a minute.

11:51:17 5 Q. What was the weather on January 1st,  
11:51:30 6 2017?

11:51:30 7 A. I don't remember.

11:51:31 8 Q. What were you wearing?

11:51:36 9 A. The whole day? You mean when I went  
11:51:38 10 outside?

11:51:39 11 Q. That morning.

11:51:42 12 A. I was wearing my -- a pair of pants and  
11:51:45 13 a shirt, and I had -- I think I had a windbreaker  
11:51:53 14 on, and I had leather-soled dress shoes on.

11:52:01 15 Q. What type of tread was on those  
11:52:04 16 dress shoes?

11:52:08 17 A. All I can say is leather soles.

11:52:19 18 Q. At some point in the morning, you went  
11:52:22 19 over to 37 Schmarbeck?

11:52:26 20 A. Yeah.

11:52:26 21 Q. What time did you leave 33 and go over  
11:52:29 22 to 37?

11:52:30 23 A. It was early. Like 6:30, 7 o'clock in

11:52:32 1 the morning. It was early.

11:52:36 2 Q. Who was present at 37 that morning?

11:52:44 3 A. From my memory it was me, Rachel, Earl,  
11:52:47 4 and the three little boys.

11:52:51 5 Q. At some point that morning your  
11:52:54 6 attention was drawn to a red van parked on  
11:52:57 7 Schmarbeck Avenue?

11:52:58 8 A. Yeah. I saw Wolfe -- I saw the van  
11:53:01 9 pull up. I was looking out the window when the van  
11:53:06 10 pulled up.

11:53:06 11 Q. What type of street -- actually, strike  
11:53:09 12 that.

11:53:09 13 The block that your properties are located  
11:53:14 14 on Schmarbeck Avenue, is that a two-way street or  
11:53:18 15 a one-way street?

11:53:21 16 A. It's a two-way street.

11:53:23 17 Q. How many lanes of traffic are located  
11:53:27 18 on Schmarbeck Avenue within that block?

11:53:44 19 A. I would say you could -- well, I know  
11:53:46 20 you could safely put three cars abreast, so you  
11:53:49 21 could have a parked car on each side of the street  
11:53:51 22 and one car could safely navigate right down the  
11:53:55 23 middle.

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11:53:56 1 If it's a fire truck or something big, wide,  
11:53:59 2 and I was going to say noisy, sometimes they have  
11:54:04 3 trouble getting down the street. The garbage  
11:54:08 4 trucks and the plow trucks sometimes, when there's  
11:54:10 5 people parked on both sides, they'll have trouble  
11:54:12 6 negotiating the street.

11:54:13 7 Q. Is there any crosswalk or indication on  
11:54:17 8 the road for pedestrians within that block on  
11:54:19 9 Schmarbeck?

11:54:22 10 A. Up at Broadway, after they milled  
11:54:28 11 it -- I don't know what year that was -- with  
11:54:32 12 enough calls to City Hall, they gave us a half  
11:54:35 13 a crosswalk -- a half of paved -- of painted  
11:54:39 14 pavement up at the corner.

11:54:41 15 They gave us, you know, a line -- a white  
11:54:44 16 line where the car could pull to the white line,  
11:54:46 17 but I think that was about it.

11:54:50 18 Q. And that's at the intersection of  
11:54:51 19 Broadway and Schmarbeck?

11:54:52 20 A. Yeah. That's another 200 feet up the  
11:54:55 21 street.

11:54:58 22 Q. What time was it when the red van  
11:55:00 23 pulled up and parked on Schmarbeck?

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11:55:06 1 A. I don't remember the exact time.  
11:55:07 2 Q. What drew your attention to the van?  
11:55:10 3 A. Well, it pulled up in front of 33, and  
11:55:14 4 Mike popped out of it. Mike Wolfe popped out of  
11:55:18 5 the driver's side. That's what really drew my  
11:55:21 6 attention to it was Mike Wolfe was driving it.

11:55:23 7 Q. Was that the first time you had seen  
11:55:26 8 Mike since he had stopped staying at 33?

11:55:34 9 A. I think I saw him on like the 28th, but  
11:55:37 10 it was like fleeting. Like he just walked down the  
11:55:40 11 street and went in the house. But, yeah, that  
11:55:46 12 was -- that was the first good look I had at him  
11:55:49 13 and like that he was going to be there for a while.

11:55:54 14 Q. What about the red van concerned you?

11:55:59 15 A. It was a couple things. First, six,  
11:56:04 16 eight weeks before, Mike had asked me to cash  
11:56:07 17 a check, and I said, I'm not cashing your check.  
11:56:10 18 I said, take it somewhere and get it cashed. He  
11:56:13 19 said, well, I got no ID.

11:56:15 20 I said, well, how have you been cashing them  
11:56:17 21 so far? And he said, well, I don't want to go  
11:56:19 22 there. And I said, well, tell me. And he said,  
11:56:22 23 I give it to the crack man. I said, well, go give

11:56:25 1 that one to the crack man. Mike said, I owe him  
11:56:28 2 money.

11:56:28 3 So I was like: I'm not going to help you.  
11:56:32 4 You've got to have some ID. Can't Restoration give  
11:56:36 5 you something to prove that you can cash a \$35  
11:56:39 6 check? And he says, never mind.

11:56:42 7 But, yeah, he told me he didn't have  
11:56:44 8 a driver's license.

11:56:47 9 Q. Did you ever contact the police the  
11:56:49 10 morning of January 1st, 2017, with regard to the  
11:56:51 11 red van?

11:56:53 12 A. No.

11:56:58 13 Q. When did you first notice police had  
11:57:01 14 arrived on Schmarbeck Avenue on January 1st?

11:57:05 15 A. I'm going to say it was about ten or  
11:57:09 16 15 minutes after Mike got there.

11:57:10 17 Mike pulled up, got out of the van, went in  
11:57:13 18 the house. And I was like, as we're cooking and  
11:57:19 19 we're negotiating in the kitchen, looking out on  
11:57:21 20 all this, Earl said, what's going on? I said,  
11:57:24 21 well, Mike's here.

11:57:25 22 I think I told Rachel: The bad penny's  
11:57:31 23 back. And she said, why -- I think she said, did

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11:57:36 1 he go in the house, or what's going on? I said,  
11:57:38 2 well, he just pulled up in a van.

11:57:40 3 Now, Earl wouldn't have known, but Rachel  
11:57:43 4 might have mentioned it: Well, whose van is it?  
11:57:47 5 And I said, I don't know. We'll figure it out.

11:57:50 6 We're not going to worry about it right now.

11:57:52 7 Q. The observations you made of the van  
11:57:55 8 and the police when they arrived, that was all from  
11:57:57 9 within the kitchen of 37?

11:58:00 10 A. Yeah, looking out the kitchen window.

11:58:01 11 Q. How many police did you first observe  
11:58:04 12 arrive on Schmarbeck that morning?

11:58:07 13 A. Two. The first Tahoe pulled in the  
11:58:09 14 middle of the road. It didn't pull over to the  
11:58:12 15 curb. It pulled right in the center of the road.

11:58:15 16 Q. When you say two, do you mean two  
11:58:18 17 vehicles or two officers?

11:58:19 18 A. No. Just one with two officers in  
11:58:21 19 there. And only one got out.

11:58:23 20 Q. Please describe the physical appearance  
11:58:26 21 of the officer that got out of the Tahoe.

11:58:35 22 A. I want to say he was tall, but that's  
11:58:37 23 like -- I was 150 feet away. That's all I can tell

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11:58:46 1 you. He seemed to be a little taller than most.

11:58:50 2 And he was driving.

11:58:50 3 Q. What happened when the officer exited  
11:58:52 4 the vehicle?

11:58:53 5 A. He walked over about to the curb, and  
11:58:56 6 he stood there and talked to Mike. Mike came out  
11:59:02 7 like as they were just almost simultaneously with  
11:59:05 8 them coming down the street.

11:59:07 9 So Mike might have been waiting on the  
11:59:08 10 sunporch there. He might have been standing on the  
11:59:11 11 porch and come down off the steps to almost meet  
11:59:13 12 them when they got there.

11:59:15 13 Q. Were you able to see what Mike was  
11:59:17 14 doing before he walked out to the officer?

11:59:20 15 A. No.

11:59:24 16 Q. When you say that the officer walked to  
11:59:27 17 the curb, is that the curb of the street and the  
11:59:29 18 sidewalk?

11:59:31 19 A. Yeah.

11:59:33 20 Q. Is that in front of 33?

11:59:34 21 A. Yeah.

11:59:35 22 Q. What happened after you saw Mike and  
11:59:40 23 the officer meet each other at the curb?

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11:59:45 1 A. I think there was some conversation in  
11:59:47 2 the house between maybe me and Rachel. Maybe me  
11:59:51 3 and Earl. I don't think I was standing there  
11:59:54 4 staring out the window.

11:59:55 5 I was kind of, you know, doing things, look  
11:59:58 6 out for a minute, check it out. I was more  
12:00:01 7 concerned with just keeping an eye out that Mike  
12:00:04 8 wasn't making off with the appliances out of the  
12:00:08 9 apartment with this van that I knew wasn't his.

12:00:11 10 Q. What caused you to have that concern?

12:00:20 11 A. My experience as a landlord on the  
12:00:22 12 East Side of Buffalo dealing with cross-addicted  
12:00:26 13 mental health patients.

12:00:27 14 Q. Have you had previous tenants steal  
12:00:28 15 appliances from you?

12:00:29 16 A. I've had previous tenants threaten to  
12:00:32 17 steal appliances. I've had previous tenants break  
12:00:39 18 them as they were walking out the door. So, you  
12:00:43 19 know.

12:00:43 20 Q. Had Mike threatened to do that in this  
12:00:46 21 unit?

12:00:47 22 A. Mike was noncommunicative. Mike was  
12:00:49 23 like -- from the middle of December, we hadn't

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12:00:53 1 really said anything. And then when I found out  
12:00:55 2 where he was and I tried to track him down that way  
12:00:57 3 and say, are you going to give me the keys back?  
12:01:00 4 Are you done over here? That didn't work too well  
12:01:04 5 because --

12:01:07 6 Q. Did Mike owe you any rent on January 1st,  
12:01:11 7 2017?

12:01:11 8 A. I don't remember.

12:01:12 9 Q. Did you have a written lease with Mike  
12:01:14 10 Wolfe?

12:01:15 11 A. I had a rental agreement. We had the  
12:01:18 12 same lease with everybody. If it's a Section 8  
12:01:21 13 tenant, we call it a lease. If it's a guy on  
12:01:24 14 month-to-month, we just call it a rental agreement.  
12:01:26 15 But it's the same document.

12:01:28 16 Q. It's reduced to writing --

12:01:28 17 A. Yeah.

12:01:29 18 Q. -- in a document?

12:01:30 19 A. Yeah.

12:01:41 20 Q. The observations you made of the  
12:01:45 21 officer conversing with Mike, that occurred from  
12:01:48 22 the kitchen -- your vantage point in your kitchen  
12:01:54 23 at 37 at the time?

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12:01:55 1 A. Yes.

12:01:55 2 Q. How long did you observe Mike and the  
12:01:57 3 officer conversing from your window?12:01:59 4 A. I don't remember exactly. And  
12:02:01 5 remember, it's you're glancing out the window,  
12:02:03 6 you're watching, you know, you're trying to keep  
12:02:07 7 on -- I got three little ones. We're trying to  
12:02:09 8 make breakfast.12:02:10 9 Everybody's moving around the kitchen at  
12:02:12 10 once, and we're trying to -- and I think I told  
12:02:15 11 Earl: As long as he don't put nothing in the back  
12:02:19 12 of that van, don't worry about it. You know, as  
12:02:22 13 long as he's not hauling off the fridge, just don't  
12:02:24 14 worry about it, Earl. It's no biggie. He's  
12:02:26 15 probably just here getting stuff or something.12:02:28 16 Q. During the period of time that the  
12:02:29 17 officer was conversing with Mike at the curb, how  
12:02:35 18 many police vehicles were present?12:02:44 19 A. See, now, I'm almost relying on the  
12:02:46 20 video and not my memory. Do you know what I mean  
12:02:48 21 by that?12:02:49 22 Q. Do you have difficulty remembering the  
12:02:51 23 incident?

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12:02:56 1 A. I would be delighted to forget it.  
12:03:01 2 Q. Do you have difficulty remembering the  
12:03:04 3 incident?

12:03:08 4 A. The further I get away from it, the  
12:03:12 5 less of it I remember real clearly. No, I don't  
12:03:15 6 have difficulty remembering it.

12:03:18 7 Q. Did there come a time when you observed  
12:03:19 8 a second police vehicle park on Schmarbeck in the  
12:03:23 9 vicinity of 33?

12:03:29 10 A. I don't think I seen them pull up, but  
12:03:33 11 yeah, at some point I became aware now there's two  
12:03:37 12 cars out there.

12:03:37 13 Q. Where were you when you became aware of  
12:03:39 14 the second car?

12:03:40 15 A. I was still upstairs.

12:03:43 16 Q. What point did you choose to exit 37 to  
12:03:48 17 go outside?

12:03:50 18 A. I don't -- I don't know what -- I don't  
12:03:55 19 know what kind of conversation we were having, me  
12:03:58 20 and Earl and Rachel, but I think when the second  
12:04:04 21 police car got there, I thought: Oh, there's  
12:04:06 22 something serious going on down there.

12:04:10 23 Q. What, if anything, did you observe

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12:04:11 1 about the interaction between the police and Mike  
12:04:14 2 that caused you to form that opinion?

12:04:16 3 A. I'm pretty sure the first police car  
12:04:25 4 pulled up, the driver got out, walked over, Mike  
12:04:29 5 talked to him.

12:04:29 6 Mike was pointing up at the kitchen window,  
12:04:36 7 and I was like -- Rachel was concerned, because  
12:04:39 8 Rachel noticed that, and she said, what is he  
12:04:42 9 pointing up here for? And I said, I don't know.  
12:04:46 10 Maybe he's telling him where his landlord lives.  
12:04:48 11 I don't know.

12:04:48 12 Or maybe he knew I had left, because he  
12:04:52 13 could have heard me leave that morning, and maybe  
12:04:54 14 he said, well, if he's not back in the back, he's  
12:04:57 15 over there.

12:05:00 16 When the second police car -- okay. They  
12:05:03 17 talked for a minute, and then Mike disappears, and  
12:05:06 18 then the second police car pulls up. And I think  
12:05:09 19 I thought at the time like: Okay. Why are all  
12:05:12 20 these cops converging on the house and Mike just --  
12:05:18 21 what's going on with Mike? Mike just went in the  
12:05:20 22 house.

12:05:20 23 I wasn't sure what conversation had gone on

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12:05:23 1 between Mike, but now more people were coming.

12:05:26 2 Q. Were you able to hear any of the  
12:05:28 3 conversation from where you were?

12:05:29 4 A. No. Just -- no, I was not able to be  
12:05:31 5 a party to hear any of that, but I know he was  
12:05:34 6 pointing up at the house a couple of times.

12:05:37 7 Q. How long did the conversation between  
12:05:40 8 the officers occur before you exited the home?

12:05:48 9 A. I don't know. I'd like to know, but  
12:05:50 10 I don't.

12:05:51 11 Q. Did anyone summon you out of 37?

12:05:58 12 A. No.

12:05:59 13 Q. Did anyone call you and ask you to come  
12:06:03 14 out of 37?

12:06:06 15 A. No.

12:06:14 16 Q. Who was with you when you exited the  
12:06:16 17 house?

12:06:18 18 A. I thought Earl was like right with me  
12:06:20 19 but he wasn't.

12:06:25 20 Q. What did you do when you exited 37?

12:06:29 21 A. I walked over to ask the driver of the  
12:06:33 22 first Tahoe what was going on with Mike.

12:06:38 23 Q. Did you enter the roadway in order to

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12:06:42 1 approach the first Tahoe?

12:06:45 2 A. Yeah.

12:06:48 3 Q. Did you in any manner call out to the  
12:06:50 4 police before you entered the roadway?

12:06:55 5 A. No.

12:07:06 6 Q. At the point that you approached the  
12:07:08 7 first Tahoe in the roadway, were any of the  
12:07:10 8 officers outside of the police vehicles?

12:07:21 9 A. I think when I last looked out the  
12:07:26 10 window or watched or saw on the monitor, there was  
12:07:30 11 one of the policemen was still out of the car.

12:07:33 12 When I left the house, my impression was  
12:07:36 13 that he was still going to be there. That's what  
12:07:41 14 I thought. I said, well, they're still out there.  
12:07:43 15 I'll go talk to them.

12:07:44 16 Q. When you mentioned the monitor, do you  
12:07:46 17 mean that your answer is from both your  
12:07:48 18 recollection and later viewing video?

12:07:54 19 A. No. That's a direct recollection from  
12:07:57 20 the morning. I remember there's still somebody out  
12:08:00 21 of the car. Let's go, Earl.

12:08:03 22 And he had to find his boots, and he had to  
12:08:05 23 get his boots on. Just slide them on. You can tie

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12:08:10 1 them outside. But let's go find out, before they  
12:08:14 2 go, what's going on. Or before Mike gets in deep  
12:08:18 3 shit. Or, you know, before somebody gets in  
12:08:22 4 trouble that maybe ought not to be in no trouble.

12:08:25 5 Q. Had you ever intervened with the police  
12:08:27 6 and Mike prior to this date?

12:08:28 7 A. No. No. I don't do that. I don't  
12:08:31 8 intervene.

12:08:40 9 Q. At some point the first police Tahoe  
12:08:43 10 pulled away?

12:08:46 11 A. I left the house, walked down the  
12:08:49 12 steps, walked out into the street, and then made  
12:08:51 13 a left to walk up to the driver's side.

12:08:55 14 As I was walking up to the vehicle, I said,  
12:08:58 15 can I talk to you? The officer on the left-hand  
12:09:02 16 side, in the passenger seat, a male officer, he  
12:09:06 17 started waving his arms and screaming really loud:  
12:09:09 18 No. We're leaving now. We're leaving now. We're  
12:09:12 19 not talking to anybody.

12:09:14 20 Q. Were you in the roadway when the  
12:09:17 21 officer yelled?

12:09:19 22 A. No. I was in the roadway to the right  
12:09:21 23 of the Tahoe. I was already on the -- my right,

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12:09:27 1 his left. I was not standing in front of the  
12:09:29 2 Tahoe, no.

12:09:30 3 Q. Would that have been the driver's side  
12:09:33 4 vehicle -- the driver's side of the Tahoe that you  
12:09:35 5 were on?

12:09:35 6 A. Yeah. Yeah. I was already -- because  
12:09:38 7 I was trying to walk up to the door -- to the  
12:09:41 8 driver's door of the first Tahoe.

12:09:43 9 Q. On the roadway of Schmarbeck?

12:09:46 10 A. Yeah.

12:09:46 11 Q. How long or how much time elapsed from  
12:09:52 12 when you exited 37, to when you approached the  
12:09:55 13 first Tahoe?

12:09:58 14 A. Maybe 14 seconds it takes. I don't  
12:10:03 15 know. I never timed that.

12:10:05 16 The time it takes to leave the front door,  
12:10:07 17 go down the steps. I might have checked the mail.  
12:10:12 18 I don't know. I might have looked in the mailbox  
12:10:14 19 for Rachel. I don't know.

12:10:15 20 Q. Where was the second police vehicle at  
12:10:17 21 the time that you approached the first Tahoe?

12:10:23 22 A. She was directly -- she was to the  
12:10:29 23 passenger side rear. Like diagonal, like behind

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12:10:35 1 him.

12:10:35 2 Q. Behind the first Tahoe?

12:10:37 3 A. Yeah.

12:10:41 4 Q. After the first Tahoe pulled away, did  
12:10:44 5 you turn your attention to the second vehicle?12:10:51 6 A. As soon as I heard the guy in there  
12:10:53 7 screaming: I'm not going to talk to anybody --  
12:10:55 8 we're not talking to anybody. We're not talking to  
12:10:57 9 anybody -- as soon as I heard that, I said, oh,  
12:11:00 10 okay. He's not going to talk to nobody. So I just  
12:11:03 11 walked past the Tahoe.12:11:05 12 As soon as I came around the back of that  
12:11:07 13 Tahoe, I looked over, and I saw the woman in the  
12:11:12 14 other Tahoe parked at the curb, and I said --12:11:17 15 Q. My question was going to be: Did you  
12:11:19 16 have any conversation with that officer?12:11:20 17 A. I said, can I speak to you? And she  
12:11:24 18 cocked her head and smiled.

12:11:27 19 Q. Did the officer -- strike that.

12:11:38 20 After the time that you turned and looked at  
12:11:41 21 the second vehicle, had you changed the position of  
12:11:45 22 your body with relation to the vehicle -- that's  
12:11:51 23 already gotten very convoluted. Let me rephrase**JACK W. HUNT & ASSOCIATES, INC.**

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12:11:54 1 that.

12:11:55 2 At the time that you turned your attention  
12:11:57 3 to the second vehicle, where were you positioned on  
12:11:59 4 the roadway in Schmarbeck?

12:12:03 5 A. I want to say I was -- I was -- it  
12:12:05 6 seems like I would have been dead in the middle of  
12:12:07 7 the road facing her.

12:12:09 8 Q. Did you ever approach the second police  
12:12:13 9 vehicle?

12:12:16 10 A. Yeah. I took two steps toward it.

12:12:18 11 After she smiled at me, I took two steps forward  
12:12:22 12 and looked up.

12:12:33 13 Q. Where was your body positioned in  
12:12:35 14 relation to that second Tahoe?

12:12:41 15 A. I don't understand how to answer that.  
12:12:44 16 I don't understand the question.

12:12:45 17 Q. How was your body oriented to that  
12:12:48 18 Tahoe?

12:12:48 19 What side of the vehicle were you on or  
12:12:51 20 walking towards?

12:12:54 21 MR. DAVENPORT: Well, form. He didn't --  
12:12:57 22 well, you can go ahead and answer.

12:12:58 23 THE WITNESS: The driver's side. The

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12:13:00 1 driver's side. Like I was about even with the  
12:13:05 2 front wheel.

12:13:26 3 BY MS. HUGGINS:

12:13:26 4 Q. Did the driver of the second Tahoe ever  
12:13:28 5 roll down the window?

12:13:36 6 A. I don't know.

12:13:36 7 Q. Did that driver ever summons you  
12:13:39 8 towards the vehicle?

12:13:49 9 A. I thought her smile was the  
12:13:51 10 acknowledgement that she heard my question and  
12:13:54 11 that she wasn't -- that she was going to be  
12:14:00 12 receptive to speaking to me.

12:14:01 13 I thought when she looked over at me and she  
12:14:04 14 smiled, that that acknowledgement was: Yeah, I'm  
12:14:06 15 here.

12:14:07 16 Q. How much time elapsed from when you  
12:14:09 17 began approaching the vehicle, to when you claim  
12:14:12 18 you were struck?

12:14:16 19 A. I claim? I'm going to say five seconds  
12:14:32 20 before she crashed into me.

12:14:34 21 Q. Did you take any effort to avoid the  
12:14:37 22 vehicle?

12:14:38 23 A. Her vehicle?

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12:14:40 1 Q. Correct. Did you take any effort to  
12:14:43 2 avoid the vehicle?

12:14:43 3 A. I didn't know she was moving her  
12:14:47 4 vehicle.

12:15:01 5 Q. What part of your bodies -- or what  
12:15:05 6 part of your body was struck by the vehicle?

12:15:12 7 A. I took two steps around the back of the  
12:15:14 8 Tahoe, I looked up, I saw the car was coming at me,  
12:15:17 9 I put my hands out in front of me, and I closed my  
12:15:20 10 eyes.

12:15:23 11 The next thing I know, I was on the ground  
12:15:25 12 and the back of my head hurt. I don't know.  
12:15:31 13 I don't know if my hands hit, my hips hit. I don't  
12:15:34 14 know.

12:15:36 15 Q. Why did you close your eyes?

12:15:38 16 A. I was scared she was going to hit me  
12:15:40 17 with the car.

12:15:45 18 Q. Did you take any other action to try to  
12:15:47 19 move out of the way?

12:15:49 20 A. There wasn't time to move out of the  
12:16:01 21 way.

12:16:01 22 Q. Where did you experience the pain to  
12:16:04 23 your head?

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12:16:04 1 A. In the back of my head.

12:16:17 2 Q. Do you have any recollection of the

12:16:21 3 vehicle striking you?

12:16:33 4 A. I have -- I don't have a visual

12:16:37 5 recollection of it, but I have a recollection in

12:16:40 6 my head of falling. I remember falling down.

12:16:44 7 I remember: Oh, Christ. It's the first -- you're

12:16:48 8 talking to yourself, you know. I remember that.

12:16:58 9 Q. What part of the vehicle struck your

12:17:00 10 body?

12:17:03 11 A. I don't know. I put my hands out.

12:17:05 12 That's all.

12:17:12 13 Q. Did you notice any injury to your hands

12:17:19 14 after you claim the vehicle struck you?

12:17:24 15 A. Like within the first minute? No.

12:17:28 16 I wasn't --

12:17:29 17 Q. Immediately after.

12:17:30 18 A. After I hit the ground, my head was

12:17:32 19 hurting so bad, I wasn't paying no attention to

12:17:37 20 nothing else but the back of my head.

12:17:38 21 Q. Where was your body positioned with

12:17:40 22 relation to the Tahoe when you landed on the

12:17:45 23 ground?

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12:17:49 1 A. I don't know when I landed on the  
12:17:52 2 ground, but I know when I opened my eyes where  
12:17:55 3 I was. Like my first recollection after I hit the  
12:17:57 4 ground, I know where I was then.

12:18:01 5 Q. How much period of time elapsed before  
12:18:03 6 you opened your eyes while you were on --

12:18:05 7 A. I don't know.

12:18:06 8 Q. -- the ground?

12:18:07 9 A. I don't know.

12:18:08 10 Q. Where were you when you opened your  
12:18:09 11 eyes?

12:18:10 12 A. I was laying on my back, and when I go  
12:18:15 13 to get up when I'm laying on my back in the street,  
12:18:18 14 I kind of bend up forward, and as I bent up  
12:18:22 15 forward, I looked at my feet, and my feet was up  
12:18:24 16 and underneath the car.

12:18:25 17 And the first thing I thought is: She's  
12:18:29 18 going to run over my legs. So I turned to my left  
12:18:31 19 side, and it looked like a silent movie. It had to  
12:18:39 20 look like a silent movie, because I don't remember  
12:18:42 21 hearing anything, and I like moved my feet like  
12:18:45 22 I was pedaling to get out from underneath the car.

12:18:47 23 And then when I got out from under it, I was

12:18:50 1 on my left side, and I was looking down Schmarbeck  
12:18:53 2 on my side, like this, and I'm opening and I'm  
12:18:56 3 closing my eyes as I'm coming around, and I look  
12:19:00 4 down toward Schlenker, where the stop sign is, and  
12:19:05 5 I remember seeing the police car down there.

12:19:07 6 I don't remember if he had his lights on or  
12:19:09 7 not, but as I started -- as I realized then, oh,  
12:19:13 8 okay, I'm out from underneath this car, there's  
12:19:16 9 a cop car down there, okay, all right, I know where  
12:19:19 10 I'm at, I started to lean forward to get up, and as  
12:19:22 11 soon as I leaned forward to get up, that's when the  
12:19:25 12 back of my head really -- that's when the pain  
12:19:29 13 really took off.

12:19:29 14 Q. Were you able to actually physically  
12:19:31 15 get off the ground --

12:19:33 16 A. No.

12:19:33 17 Q. -- before you felt the pain?

12:19:34 18 A. No. And as soon as the shot of pain  
12:19:40 19 went through me, I started yelling for Earl.

12:19:42 20 Q. Aside from the pain to the back of your  
12:19:44 21 head, did you notice any other injuries at that  
12:19:46 22 point?

12:19:47 23 A. No.

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12:19:51 1 Q. When did police officers exit that  
12:19:56 2 second Tahoe?

12:20:05 3 A. All my recollection of what you just  
12:20:07 4 asked me is from the video.

12:20:09 5 Q. Okay. Fair enough.

12:20:10 6 Do you have any recollection -- strike that.

12:20:20 7 When is -- at what point in time do you next  
12:20:25 8 remember something from while you were at Schmarbeck?

12:20:34 9 A. After I started to get up and the pow  
12:20:37 10 happened in the back of my head, it just -- it was  
12:20:40 11 like, bang. It hurt real bad.

12:20:42 12 After that happened, I grabbed the back of  
12:20:44 13 my head, and I laid back down, and I said, Earl?  
12:20:47 14 I said, Earl? And I heard him say, Dad? And  
12:20:52 15 I said, yeah. Call an ambulance. The back of my  
12:20:54 16 head hurts. This hurts too bad. And he said,  
12:20:58 17 all right.

12:21:02 18 And I think he said, just stay there. And  
12:21:07 19 I said, I'm not going anywhere. Then I just closed  
12:21:15 20 my eyes and laid there for a minute, holding the  
12:21:17 21 back of my head.

12:21:18 22 And I don't know how long it was, but I think  
12:21:23 23 somebody asked me a question, and I thought it was

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12:21:27 1 Earl. I don't know what the question was, but  
12:21:31 2 I thought somebody said something to me, and it was  
12:21:41 3 about that time I opened my eyes, and I looked up,  
12:21:43 4 and then it started getting ridiculous.

12:21:45 5 Q. So when you said that certain things  
12:21:51 6 from your memory are from the video and not your  
12:21:54 7 recollection --

12:21:55 8 A. Yeah.

12:21:55 9 Q. -- is that due to difficulty recalling  
12:22:00 10 what happened that day or because you lost  
12:22:01 11 consciousness?

12:22:06 12 A. I got out from under the police car and  
12:22:08 13 I looked down Schlenker, and I seen the back of  
12:22:10 14 that police car. At that point it starts hurting  
12:22:13 15 and I'm putting my hand up and I'm grabbing the  
12:22:17 16 back of my head, and I'm thinking: What are you  
12:22:20 17 going to do? Can you get up? You tried that once.  
12:22:23 18 That's not going to work. Get Earl?

12:22:30 19 I didn't see that police car down at  
12:22:34 20 Schlenker back up the street, but I know he backed  
12:22:37 21 up the street because I seen it on the video, so  
12:22:42 22 I know he backed up the street.

12:22:43 23 Now, whether I was looking down the street

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12:22:45 1 at him as he was backing up, I don't know. Or was  
12:22:50 2 I looking down the street when he was still going  
12:22:52 3 toward the stop sign, I don't know. But I know he  
12:22:57 4 eventually backed up the street.

12:23:00 5 Q. So any difficulty in just describing  
12:23:06 6 this is not from you losing consciousness or an  
12:23:09 7 inability to recall the incident, it's because you  
12:23:12 8 watched a video since then?

12:23:13 9 A. I don't know.

12:23:14 10 Q. Okay.

12:23:14 11 A. I don't know whether I lost  
12:23:15 12 consciousness for five seconds or two seconds or  
12:23:17 13 whether I was conscious the whole time.

12:23:19 14 Q. Fair enough.

12:23:20 15 At any point while you were on Schmarbeck  
12:23:26 16 Avenue, did you hear any of the conversation  
12:23:29 17 between and amongst the officers present?

12:23:41 18 A. There were bits and pieces that  
12:23:43 19 I picked up here and there.

12:23:44 20 Q. What were you able to hear?

12:23:46 21 A. While I was laying on the ground --  
12:23:49 22 we're back to that point -- I opened my eyes and  
12:23:53 23 looked up. I saw a policewoman with her hands on

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12:23:56 1 her hips, and as soon as I opened my eyes, she  
12:23:59 2 said, if you don't get off the ground, I'm going to  
12:24:01 3 arrest you.

12:24:03 4 Q. My question is if you heard  
12:24:05 5 conversation between and amongst the officers.

12:24:08 6 A. Not that I remember.

12:24:09 7 Q. Okay. At some point you were placed  
12:24:18 8 under arrest and placed in the back of a police  
12:24:21 9 vehicle while on Schmarbeck Avenue?

12:24:24 10 A. Yes.

12:24:25 11 Q. Which of the Tahoe vehicles were you  
12:24:27 12 placed in?

12:24:28 13 A. The one with the males in it.

12:24:36 14 Q. At any point when you exited  
12:24:38 15 37 Schmarbeck, until your arrest, did you have  
12:24:40 16 access to a cell phone?

12:24:54 17 A. I had to have a cell phone in my pocket  
12:24:57 18 because I was booked in with a cell phone.

12:24:59 19 Q. Did you call anyone during that period  
12:25:05 20 of time?

12:25:05 21 A. After I exited 37?

12:25:07 22 Q. Yeah.

12:25:08 23 To qualify just the time frame: Exiting 37,

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12:25:11 1 until you were arrested, did you contact anyone on  
12:25:14 2 your cell phone?

12:25:15 3           A.     No.

12:25:16 4           Q.     Did you do anything with your cell phone  
12:25:18 5 in any attempt to record or photograph what  
12:25:20 6 happened?

12:25:25 7           A.     No.

12:25:31 8           Q.     How long were you in the back of the  
12:25:34 9 police vehicle before being transported away from  
12:25:39 10 Schmarbeck Avenue?

12:25:42 11          A.     I have no recollection of time, as far  
12:25:47 12 as the length of it, other than the video, and  
12:25:52 13 I tried to figure out once how long was -- how long  
12:25:56 14 did all this happen, and I really couldn't piece it  
12:25:59 15 together. I couldn't figure it out.

12:26:00 16          I think I was in the back of the car, as  
12:26:04 17 best as I can guess, better than a half hour.

12:26:09 18          Q.     When you attempted to calculate that  
12:26:12 19 time by watching the video, were you able to view  
12:26:18 20 continuous video from the time you were placed in  
12:26:20 21 the vehicle, until the vehicle left Schmarbeck?

12:26:23 22          A.     No. When I was trying to figure that  
12:26:25 23 out, I was using that timer up on top of the video.

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12:26:27 1 I was trying to see, okay, this happened at this  
12:26:31 2 time to try to figure out how long the whole thing  
12:26:34 3 lasted. No. The answer's no.

12:26:46 4 Q. Did you request any medical attention  
12:26:48 5 from any of the officers while you were still on  
12:26:52 6 Schmarbeck Avenue?

12:27:01 7 A. The officers were present and would  
12:27:03 8 have heard me tell Earl: Call an ambulance.

12:27:06 9 Q. Did you specifically ask any officers  
12:27:09 10 for medical attention?

12:27:19 11 A. No.

12:27:19 12 Q. Did you identify the pain you were  
12:27:23 13 experiencing to the back of your head to any of the  
12:27:25 14 officers while you were on scene on Schmarbeck  
12:27:30 15 Avenue?

12:27:30 16 A. After the policewoman said, if you  
12:27:36 17 don't get up, I'm going to arrest you, I don't  
12:27:41 18 remember the exact words I used, but I made it  
12:27:45 19 quite clear to her, and I think it was something  
12:27:49 20 along the lines: You just hit me with a police  
12:27:53 21 car, and the back of my head's on fire. I'm not  
12:27:56 22 getting off the ground. I'm going to go to the  
12:27:58 23 hospital in an ambulance. Or something to that

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12:28:00 1 effect.

12:28:03 2 And honest to God, after she threatened to  
12:28:07 3 arrest me, I was like: This whole thing is getting  
12:28:10 4 ludicrous, and like, you know, when somebody tells  
12:28:14 5 you they're going to arrest you after they hit you  
12:28:16 6 with a police car, you don't want to be in  
12:28:19 7 conversational mode with those people.

12:28:20 8 Q. What medical attention, if any, did you  
12:28:23 9 want while you were still on Schmarbeck Avenue?

12:28:27 10 A. I just wanted my head to stop hurting.

12:28:35 11 Q. Was there any specific medical  
12:28:37 12 attention that you requested of the officers while  
12:28:39 13 you were on Schmarbeck Avenue?

12:28:42 14 A. No.

12:28:44 15 Q. Were you taken directly to ECMC when  
12:28:48 16 the Tahoe departed from Schmarbeck Avenue?

12:28:51 17 A. I was laying down in the back seat of  
12:28:53 18 the Tahoe when they took me. I don't know.

12:29:02 19 Q. Okay. Another way to ask that: Was  
12:29:05 20 there any stops made en route to ECMC?

12:29:13 21 A. I don't know.

12:29:14 22 Q. Did you --

12:29:14 23 A. I mean, I don't think they turned on

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12:29:19 1 the lights. I know they --

12:29:21 2 Q. Well, that's not my question.

12:29:22 3 A. Okay.

12:29:23 4 Q. My question is: Were you taken

12:29:24 5 directly to ECMC when you were transported from

12:29:28 6 Schmarbeck Avenue?

12:29:28 7 A. I don't know.

12:29:29 8 Q. Did you lose consciousness at any

12:29:32 9 period of time when you were --

12:29:33 10 A. I don't know.

12:29:33 11 Q. -- in the vehicle?

12:29:34 12 A. If I lost consciousness, I don't  
12:29:37 13 remember. I wouldn't have known it. I didn't know  
12:29:39 14 it.

12:29:39 15 Q. Do you have gaps in your memory from  
12:29:41 16 while you were in the police vehicle?

12:29:53 17 A. See, I got --

12:29:54 18 Q. Let me ask it this way --

12:29:56 19 A. I don't remember getting out of the  
12:29:58 20 police vehicle at ECMC and getting in the room at  
12:30:01 21 ECMC. I can't remember how I got down the hallway.  
12:30:13 22 And there might be pieces of that ride that I don't  
12:30:15 23 remember in the same way.

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12:30:16 1 Q. Do you remember being taken anywhere  
12:30:19 2 else between Schmarbeck Avenue and ECMC that  
12:30:22 3 morning?

12:30:22 4 A. No, I don't remember.

12:30:31 5 Q. What medical treatment, if any, did you  
12:30:33 6 receive while you were at ECMC that morning?

12:30:39 7 A. Medical records are Latin to me, so  
12:30:43 8 I don't understand them.

12:30:43 9 Q. Not based on the records, but your  
12:30:46 10 recollection of that morning.

12:30:49 11 A. There was a nurse that saw me. I think  
12:30:52 12 there was a doctor that saw me. They put me in  
12:30:56 13 I think an MRI tube. The big metal one. I had one  
12:31:00 14 of those for -- I don't know -- a minute or so.  
12:31:06 15 I can't remember if they gave me fluids or not.

12:31:13 16 Q. Did you make any requests for specific  
12:31:16 17 medical treatment of any ECMC staff?

12:31:19 18 A. Yeah. The first nurse that walked in.

12:31:21 19 Q. What did you request of her?

12:31:23 20 A. To leave me alone. To get as far away  
12:31:26 21 from me as possible. I didn't want her involved in  
12:31:31 22 my care.

12:31:32 23 Q. Did you make any requests for medical

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12:31:34 1 treatment from any other ECMC staff?

12:31:35 2 A. I told them I wanted to see a doctor.

12:31:38 3 When the nurse would come in at the

12:31:40 4 beginning, I'd say, when am I going to see the

12:31:43 5 doctor? I wanted to see the doctor. I wanted to

12:31:46 6 see a doctor.

12:31:46 7 Q. And at some point that morning, you saw

12:31:50 8 a doctor?

12:31:50 9 A. Yeah.

12:31:50 10 Q. Did the doctor perform any examination

12:31:52 11 of you?

12:31:52 12 A. Yeah. He looked at my head. He was

12:31:55 13 the one who told them to get the handcuffs off.

12:31:58 14 I'm pretty sure he was.

12:32:04 15 Q. Did you receive any stitches that

12:32:06 16 morning?

12:32:07 17 A. No. No.

12:32:07 18 Q. Did you receive -- strike that.

12:32:10 19 Were any medical procedures of any kind

12:32:13 20 performed on you that morning?

12:32:14 21 A. I think they put something on the front

12:32:16 22 of my head, because I had a -- I had -- they said

12:32:19 23 I had an abrasion on the front of my head.

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12:32:29 1 Q. Were you bleeding from anywhere?

12:32:30 2 A. I don't think so. I might have been

12:32:31 3 bleeding from the front, but I wasn't bleeding from

12:32:33 4 the back.

12:32:33 5 Q. Have you ever received an MRI prior to

12:32:36 6 January 1st, 2017, to your head?

12:32:45 7 A. I don't know if I had one as part of

12:32:47 8 that back surgery in '98 or not.

12:32:52 9 Q. Had you ever received an x-ray or

12:32:53 10 a CAT scan of any kind to your head or neck prior

12:32:57 11 to January 1st, 2017?

12:32:57 12 A. I don't know how to -- I don't know.

12:33:01 13 Q. Did you ever describe, to any medical

12:33:06 14 professionals at ECMC, what occurred on Schmarbeck

12:33:09 15 Avenue that morning?

12:33:20 16 A. Yeah. The nurse and the doctor that

12:33:22 17 I -- the second nurse and the doctor.

12:33:25 18 Q. Did you observe any of those medical

12:33:28 19 professionals, the nurse or the doctor, record your

12:33:33 20 description of what happened that day?

12:33:37 21 A. No.

12:33:37 22 Q. Did you observe any of those medical

12:33:39 23 professionals take any notes or make any notations

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12:33:43 1 while they were speaking with you?

12:33:46 2 A. No. I think almost all that stuff was  
12:33:48 3 done in the hallway on a computer.

12:34:02 4 Q. Have you made any claims about ECMC or  
12:34:04 5 its staff with regard to your medical treatment  
12:34:07 6 that morning?

12:34:14 7 A. You mean officially, like filed  
12:34:16 8 a complaint with them or something?

12:34:18 9 Q. Let me break it down in two ways.  
12:34:20 10 Have you done anything like that legally or  
12:34:22 11 submitted any type of complaint to ECMC for your  
12:34:24 12 medical treatment that morning?

12:34:26 13 A. No.

12:34:27 14 Q. Have you given any statements to anyone  
12:34:30 15 at ECMC, aside from the statements you made to  
12:34:35 16 staff during your actual treatment, with regard to  
12:34:39 17 the conduct or the manner in which ECMC conducted  
12:34:41 18 your treatment that day?

12:34:43 19 A. Yes. The answer is yes, I think.

12:34:45 20 Q. Where did you give those statements?

12:34:46 21 A. I called ECMC several -- I think on  
12:34:53 22 several occasions very early on, like the first  
12:34:55 23 week of January, second week of January, because

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12:35:03 1 the very first nurse in the room, the one I had the  
12:35:06 2 most issue with, I thought that they ought to be  
12:35:11 3 aware of that.

12:35:12 4 Q. Who did you contact at ECMC?

12:35:15 5 A. I think my first contact was with  
12:35:20 6 somebody in social work to find out who to contact,  
12:35:23 7 and then I tried to contact somebody. I may have  
12:35:27 8 sent an email to her.

12:35:29 9 I can't remember her name off the top of my  
12:35:34 10 head. She was like the head nurse of the emergency  
12:35:37 11 department or something like that.

12:35:39 12 I also talked to the chaplain's office at  
12:35:41 13 some point. And I made several calls I think to  
12:35:44 14 social work to try to get somebody to realize what  
12:35:49 15 had happened and that that would be better if it  
12:35:54 16 didn't happen again.

12:35:55 17 Q. The head nurse that you referred to, is  
12:35:58 18 that the person you made a complaint with or is  
12:36:00 19 that the person you were making the complaint  
12:36:02 20 about?

12:36:02 21 A. I never -- I never made a complaint --  
12:36:08 22 I can't -- I don't ever remember making a complaint  
12:36:12 23 in writing, but it was the one that I was speaking

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12:36:14 1 to, not the one that I was making it about.

12:36:19 2 And the complaint really wasn't that  
12:36:22 3 serious. It really was more about -- well, I can  
12:36:27 4 tell you what it was about, if you want to know.

12:36:29 5 Q. Well, I'm asking if you made a complaint  
12:36:32 6 about the manner in which ECMC staff treated you  
12:36:34 7 that morning.

12:36:34 8 A. Yeah. One person. The person I didn't  
12:36:38 9 want to treat me.

12:36:39 10 Q. It was that first initial nurse you  
12:36:41 11 mentioned?

12:36:42 12 A. Yeah, it was the first nurse that  
12:36:43 13 walked in the door. And she asked me: What's  
12:36:45 14 wrong with you? Why did you jump on top of  
12:36:49 15 a police car? And I said, I didn't jump on top  
12:36:51 16 of a police car. Who told you that?

12:36:54 17 Q. When did you send the email to ECMC  
12:36:59 18 with regard to your concerns?

12:37:00 19 A. I don't remember. I don't remember.

12:37:01 20 Q. Was it within the calendar year of this  
12:37:03 21 incident occurring?

12:37:04 22 A. I would think so, yeah.

12:37:07 23 Q. Was it that winter?

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12:37:10 1 A. I'm pretty sure.

12:37:11 2 Q. Do you know if it was in the month of  
12:37:13 3 January 2017?

12:37:13 4 A. Could have been. The closer to the  
12:37:19 5 incident, the more accurate we would be of finding  
12:37:22 6 when it -- when it happened.

12:37:24 7 And I had no knowledge of Internal Affairs  
12:37:28 8 or I had no knowledge of the federal lawsuit or  
12:37:31 9 I had no knowledge of that at that point.

12:37:34 10 At that point I didn't think I could  
12:37:36 11 control -- still don't think I can control any of  
12:37:39 12 that behavior on the part of the police.

12:37:43 13 All I was thinking about was what happened  
12:37:45 14 to me at ECMC when she walked in there accusing me  
12:37:50 15 like of what the police accused me of.

12:37:53 16 And I was like: That's not how you treat  
12:37:56 17 people like when they come in the emergency room.  
12:37:59 18 You just don't walk in the door and say, why did  
12:38:01 19 you jump on a police car? I didn't do that.

12:38:03 20 Q. At some point did you make a complaint  
12:38:05 21 with regard to the handcuffs to ECMC staff?

12:38:08 22 A. Yeah. As soon as the doctor walked in,  
12:38:10 23 because I asked him: Can you get these handcuffs

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12:38:14 1 off?

12:38:14 2 Both the nurses -- both the one that I told  
12:38:17 3 just leave me alone and then the second lady that  
12:38:19 4 came in, I said, can you get these off my arms? My  
12:38:22 5 arms are swelling up around the handcuffs. My  
12:38:25 6 hands are swelling up around the handcuffs. She  
12:38:28 7 said, well, the doctor. The doctor. And I said,  
12:38:30 8 okay, well, let's see the doctor.

12:38:35 9 Q. Did the handcuffs cause any lacerations  
12:38:40 10 to your wrists?

12:38:41 11 A. Yeah. Both the left hand and the  
12:38:43 12 right.

12:38:43 13 Q. Where were those lacerations on your  
12:38:45 14 wrists? The front? The back?

12:38:47 15 A. The top and the top.

12:38:52 16 Q. So the record should reflect that  
12:38:54 17 you've just pointed to on the top of both of your  
12:38:58 18 wrists, towards the inner top portion of your  
12:39:02 19 wrists and pointed.

12:39:04 20 A. Yeah.

12:39:04 21 Q. Accurate description?

12:39:08 22 Was any bone exposed?

12:39:12 23 A. No.

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12:39:13 1 Q. Was there any bruising to your wrists  
12:39:15 2 that day?

12:39:15 3 A. Oh, yeah. They were swelled up like  
12:39:20 4 peaches.

12:39:20 5 Q. How long did the bruising last to your  
12:39:24 6 wrists?

12:39:26 7 A. I don't think my hands looked right for  
12:39:31 8 probably three months.

12:39:32 9 Q. Did you receive any medical treatment  
12:39:35 10 from the doctors at ECMC or the staff at ECMC that  
12:39:39 11 day with regard to your wrists?

12:39:45 12 A. No.

12:39:47 13 Q. Did you complain about the swelling --

12:39:49 14 A. Oh, yes.

12:39:50 15 Q. -- and the bruising to your wrists?

12:39:55 16 A. Yeah. When the doctor came in,  
12:39:56 17 I talked to the doctor -- I don't know -- probably  
12:39:58 18 five minutes. And he said, can you guys take these  
12:40:01 19 cuffs off of him? Because I showed him my hands.  
12:40:04 20 I showed him they were swelling up. And he said,  
12:40:07 21 take these handcuffs off of him.

12:40:09 22 So he took the handcuffs off, and then when  
12:40:12 23 I raised my hands and I was looking, I could see

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12:40:15 1 the handcuffs had dug through the skin.

12:40:19 2 And the first thing I said was: Record  
12:40:23 3 this. I said, get somebody in here with a camera  
12:40:27 4 and take pictures of this. Look what they did to  
12:40:30 5 me.

12:40:30 6 Q. Were any photographs taken of your  
12:40:32 7 hands at ECMC?

12:40:33 8 A. No. All ECMC did was stand there with  
12:40:36 9 their mouth agape, looking at the police like:  
12:40:38 10 What do we do? Are we allowed to take pictures of  
12:40:41 11 his wrists? Should we take pictures of his wrists?  
12:40:46 12 These were the attitudes that you could see  
12:40:47 13 nobody knew what to do.

12:40:48 14 Q. Well, did anybody say that, or is that  
12:40:50 15 your assumption based on your observations?

12:40:53 16 A. That's my assumption from my  
12:40:58 17 observation at that point, knowing that there was  
12:41:00 18 already a lawyer waiting in the waiting room,  
12:41:02 19 because I had already been informed of that.  
12:41:05 20 Let the lawyer come down and take the pictures.

12:41:07 21 Q. Who informed you that a lawyer was  
12:41:10 22 present?

12:41:10 23 A. The second nurse.

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12:41:11 1 Q. What did she say?

12:41:12 2 A. She says, there's somebody down here

12:41:14 3 for you in the waiting room trying to get in.

12:41:17 4 Q. Did she identify that person as

12:41:18 5 a lawyer?

12:41:22 6 A. No. She identified him as a tall guy.

12:41:26 7 She said, there's a tall guy down here in the

12:41:28 8 waiting room waiting for you.

12:41:29 9 Q. Did you have any interaction with that

12:41:32 10 person while you were at ECMC?

12:41:33 11 A. No. No. I never saw Jim.

12:41:42 12 Q. Did you receive any other medical

12:41:45 13 treatment while you were at ECMC that morning that

12:41:47 14 you have not mentioned?

12:41:52 15 A. If I did, I don't remember it.

12:42:00 16 Q. The pain to the back of your head,

12:42:02 17 swelling and bruising and pain to your wrists were

12:42:04 18 discussed. Any other injuries that you noticed at

12:42:07 19 that point in time?

12:42:12 20 A. Just the abrasion in the front of my

12:42:17 21 head, but honest to God, I didn't even know I had

12:42:20 22 an abrasion in the front of my head until like

12:42:22 23 I got home and Rachel said, what's wrong with the

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12:42:25 1 front of your head?

12:42:26 2 Q. At some point you were transported from  
12:42:29 3 ECMC to central booking downtown?

12:42:33 4 A. Yeah. Yes.

12:42:43 5 Q. When you -- do you have a recollection  
12:42:45 6 of arriving to central booking downtown?

12:42:56 7 A. Yeah, I do.

12:43:00 8 Q. When you arrived at central booking,  
12:43:02 9 did you walk from the police vehicle into the  
12:43:06 10 facility of your own power?

12:43:09 11 A. Yeah. That's -- yeah. Yeah.

12:43:18 12 Q. How much time elapsed from your arrest  
12:43:20 13 at central booking, to when your -- strike that.

12:43:31 14 Did you lose consciousness at all while you  
12:43:34 15 were at ECMC in the morning?

12:43:35 16 A. I don't know.

12:43:36 17 Q. Did you lose consciousness at any point  
12:43:39 18 during your transport from ECMC, to central booking?

12:43:42 19 A. Yeah. I might have fallen asleep,  
12:43:44 20 actually.

12:43:51 21 Q. Once you've arrived at central booking,  
12:43:53 22 how much time passed from your arrival, to any  
12:43:56 23 search of your person?

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12:44:07 1 A. 20 minutes. That's a guess.

12:44:17 2 Q. In that period of time from your  
12:44:18 3 arrival, until your person was searched, what were  
12:44:24 4 you doing at central booking?

12:44:25 5 A. Okay. This is a narrative. It's the  
12:44:30 6 best way I can tell this.

12:44:33 7 I don't know what direction we came in, but  
12:44:35 8 there was a steel bench, and I remember coming in  
12:44:38 9 and one of the woman policemen said, sit on this  
12:44:41 10 steel bench.

12:44:43 11 In front of the steel bench, there was like  
12:44:45 12 a bank teller's window, and that room was all glass  
12:44:50 13 on the top, like a central control room or something.

12:44:53 14 There was a small hallway off to the left of  
12:44:55 15 it in the front, from my perspective sitting on the  
12:44:59 16 bench, and there was a cell on the left-hand side.

12:45:03 17 There might have been two cells.

12:45:05 18 Down at the end of that hallway, on the  
12:45:08 19 left-hand side, at the end of it, there were two  
12:45:11 20 doors. One went up into the control room and  
12:45:14 21 the other went into a room I couldn't see, which  
12:45:17 22 I eventually learned was where the camera was.

12:45:22 23 So I sat down on that bench when I walked

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12:45:25 1 in.

12:45:26 2 Q. So for the period of time that --

12:45:28 3 strike that.

12:45:29 4 Before your person was searched, were you  
12:45:32 5 seated on that steel bench for this entire period  
12:45:36 6 of time?

12:45:36 7 A. It took five minutes to get in, and in  
12:45:40 8 15 minutes I was sitting there on the bench.

12:45:42 9 Q. Sure. So once you've entered through  
12:45:45 10 the doors and you're inside the facility, did you  
12:45:47 11 remain seated on that steel bench until you were  
12:45:51 12 taken to --

12:45:52 13 A. Yeah, until they took me in the back.

12:45:55 14 Q. -- the search?

12:45:57 15 When you were taken into the back, you were  
12:46:01 16 taken down that hallway you've described and in  
12:46:04 17 a room towards the left, as --

12:46:07 18 A. Yeah.

12:46:07 19 Q. -- from your vantage point at the steel  
12:46:09 20 bench?

12:46:09 21 A. You're walking straight down the  
12:46:12 22 hallway, and you make a left to go into this room.

12:46:17 23 Q. Who and how were you brought to that

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12:46:20 1 room down the hallway and towards the left?

12:46:29 2 A. I was sitting there in front of like  
12:46:31 3 the bank teller's window, and I don't know where  
12:46:36 4 the policewoman went, but I remember the one went  
12:46:41 5 over to the door to go into the control room, and  
12:46:45 6 you could hear the buzz, so they let her in to go  
12:46:48 7 into the control room.

12:46:50 8 I think the other one went into the hall off  
12:46:53 9 to the left while I was sitting there on the bench.  
12:46:59 10 There was a conversation inside the control room  
12:47:01 11 for a minute, and then --

12:47:04 12 Q. Were you able to hear that conversation?

12:47:06 13 A. Yeah.

12:47:08 14 Q. At this point you are seated on the  
12:47:11 15 bench and you have been not taken to the other  
12:47:14 16 room, correct?

12:47:15 17 A. Yeah. I haven't gone in back there  
12:47:17 18 yet.

12:47:17 19 Q. Who took you to the room down the hall  
12:47:19 20 and towards the left?

12:47:22 21 A. One of the two policewomen. And to  
12:47:27 22 this -- to this day, I haven't seen like a picture  
12:47:30 23 of these two different women, so I can't give you

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12:47:35 1 a face with a name.

12:47:37 2 Q. Are you able to provide any physical  
12:47:39 3 description of which female officer walked with you  
12:47:43 4 to that back room down the hall?

12:47:47 5 A. I think once I described her she looked  
12:47:49 6 like you.

12:47:50 7 Q. What do you mean by that?

12:47:52 8 A. She had -- she had straight hair, but  
12:47:55 9 I think it was up in a bun. She didn't have a full,  
12:47:59 10 round face. I think it was the shorter of the two.  
12:48:10 11 I think it was the taller one. I -- I think it was  
12:48:13 12 the driver of the car, but I can't put faces with  
12:48:20 13 names.

12:48:21 14 Q. Were you walked to that room on your  
12:48:23 15 own power?

12:48:24 16 A. It was: Come this way.

12:48:26 17 Q. Were you able to get up off the bench  
12:48:28 18 and walk to that room yourself?

12:48:31 19 A. Yeah.

12:48:31 20 Q. Did you require any aid getting off of  
12:48:34 21 the bench or walking to that room?

12:48:41 22 A. No.

12:48:42 23 Q. Were you handcuffed the entire period

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12:48:48 1 of time that you entered the police vehicle,  
12:48:50 2 entered the facility, and were seated on that  
12:48:53 3 steel bench?

12:48:54 4 A. At some point the handcuffs came off,  
12:48:57 5 but I don't remember when.

12:48:58 6 Q. Do you know where you were at the time  
12:49:00 7 the handcuffs came off?

12:49:01 8 A. I know they were off when I went in for  
12:49:04 9 the search and when I was fingerprinted and my  
12:49:06 10 picture was took. I'm almost positive they were  
12:49:09 11 off then.

12:49:10 12 Q. So at some point the handcuffs were  
12:49:12 13 taken off before you were walked to the -- down the  
12:49:16 14 hallway --

12:49:16 15 A. Yeah.

12:49:16 16 Q. -- and into that room?

12:49:19 17 A. Yeah.

12:49:19 18 Q. Do you recall who took the handcuffs  
12:49:21 19 off you?

12:49:21 20 A. One of the two women officers. That's  
12:49:23 21 all I can tell you. I can't remember if it was the  
12:49:25 22 short one or the taller girl.

12:49:27 23 Q. And I should ask this foundational

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12:49:29 1 question: At some point the handcuffs were placed  
12:49:33 2 back on you at ECMC before you were transported  
12:49:36 3 downtown?

12:49:36 4 A. Yeah. You know, I think they might  
12:49:43 5 have had -- I can't remember if they had things on  
12:49:45 6 my legs or not. Something tells me I had things on  
12:49:50 7 my legs at some point, but I can't remember.

12:49:53 8 I'm almost positive at some point in the day  
12:49:55 9 I had a belt with the handcuffs through the belt  
12:49:59 10 and to the feet.

12:50:01 11 Q. It's your testimony that at some point  
12:50:06 12 you had some mechanism on your legs that restricted  
12:50:09 13 your movement?

12:50:10 14 A. Yeah. I think at some point they put  
12:50:11 15 leg shackles on my legs. Just something tells me  
12:50:15 16 they had a belt on me.

12:50:19 17 Q. Do you have a recollection of that  
12:50:21 18 being placed on you?

12:50:22 19 A. No. No. It's just something because  
12:50:26 20 I remember trying to walk and walking -- my gait  
12:50:28 21 was weird, and I don't know whether that was  
12:50:32 22 because I hit my head or what.

12:50:34 23 Q. Where do you recall trying to walk and

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12:50:37 1 finding that your gait was --

12:50:41 2 A. When I got out of the police car at  
12:50:43 3 central booking, it was hard to -- it was hard --  
12:50:46 4 it was hard to move. It was -- I was still  
12:50:51 5 hurting.

12:50:51 6 Q. And it is based on your gait being  
12:50:55 7 abnormal while walking from the vehicle at central  
12:51:07 8 booking into the facility that you base your  
12:51:09 9 assumption that you had some type of restraints on  
12:51:11 10 your legs?

12:51:12 11 A. Yeah. Yeah.

12:51:15 12 Q. Did you ever observe restraints being  
12:51:17 13 placed on your legs?

12:51:18 14 A. No. I don't have a memory of that.

12:51:28 15 Q. Aside from the female officer, did  
12:51:31 16 anyone else walk you down the hallway into the room  
12:51:34 17 to the left at central booking?

12:51:43 18 A. No. And I think she more summoned me.

12:51:48 19 Q. When you entered that room located down  
12:51:53 20 the hallway and to the left, who, if anyone, was  
12:51:55 21 present aside from the female officer?

12:51:57 22 A. There were two guys in there.

12:52:02 23 Q. Please describe for me what the two

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12:52:07 1 males present looked like.

12:52:09 2 A. I can't. I met them two guys for two  
12:52:12 3 minutes, maybe three.

12:52:19 4 Q. Was your only encounter with those two  
12:52:23 5 males within that room?

12:52:38 6 A. Yeah.

12:52:38 7 Q. What happened once you entered that  
12:52:40 8 room?

12:52:41 9 A. They said, look this way. So they  
12:52:44 10 wanted my attention toward them. There was a --  
12:52:47 11 like a place --

12:52:48 12 Q. When you say they, you mean the two  
12:52:50 13 males?

12:52:50 14 A. Yeah.

12:52:50 15 Q. Continue.

12:52:51 16 A. There was a place -- a camera was going  
12:52:55 17 to take your picture, and they wanted you to look  
12:52:57 18 at that and keep looking at that. If you looked  
12:53:00 19 down or to your side, they would: No. Just keep  
12:53:06 20 looking at the camera.

12:53:10 21 Q. Your photograph was taken first?

12:53:12 22 A. I don't remember.

12:53:13 23 Q. At some point your fingerprints were

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12:53:15 1 taken within that room?

12:53:16 2 A. I think a thumbprint on an electric  
12:53:21 3 machine. Maybe they went each print on the  
12:53:24 4 electric machine. I can't remember.

12:53:25 5 Q. Do you have a clear recollection of  
12:53:26 6 that?

12:53:28 7 A. No, but I'm almost positive they didn't  
12:53:30 8 use no ink. I think there was an electric machine  
12:53:34 9 there to do it.

12:53:35 10 Q. Do you recall the order with which your  
12:53:37 11 photograph and your fingerprints were taken?

12:53:41 12 A. No.

12:53:41 13 Q. At some point was a search of your  
12:53:44 14 person performed within that room?

12:53:47 15 A. Yeah.

12:53:48 16 Q. Do you recall if that search occurred  
12:53:51 17 prior to your photograph or fingerprints taken?

12:53:54 18 A. I don't know the order. It was either  
12:53:57 19 the first thing or the last thing. It wasn't  
12:53:59 20 during, in the middle. That's a weird memory.

12:54:07 21 Q. What's weird about it?

12:54:15 22 A. That I can't remember whether it was  
12:54:17 23 first or second -- or first or last.

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12:54:20 1 Q. Please describe how the search of your  
12:54:23 2 person occurred.

12:54:28 3 A. When we walked into the room, the  
12:54:31 4 policewoman was behind us. Again, I don't know  
12:54:36 5 whether it was the short one or the tall one.  
12:54:39 6 I think it was the taller of the two women. She  
12:54:42 7 was behind us.

12:54:46 8 And the one policeman on my right -- or if  
12:54:49 9 they were police, I don't know. They weren't in  
12:54:51 10 uniform, by the way, these two guys.

12:54:52 11 Q. You're referring to the two males when  
12:54:54 12 you say that?

12:54:55 13 A. Yes. Yes, ma'am.

12:54:56 14 The one policeman, the one male on my right  
12:54:59 15 said to the policewoman behind me: Where is he  
12:55:03 16 going? And she didn't answer him. Then the one  
12:55:08 17 policeman or the male on my left said, where is he  
12:55:13 18 going to end up? Where is he going? And she  
12:55:16 19 didn't answer him again. She didn't answer him.

12:55:20 20 Then the first officer asked again, or the  
12:55:23 21 first male, on my right, again, kind of went --  
12:55:27 22 looked at the -- the male looked at -- they looked  
12:55:31 23 at each other, and he said, where is he -- where is

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12:55:33 1 he going to? Where are you sending him? And she  
12:55:36 2 didn't answer him again.

12:55:39 3 And at that point, I don't know if she -- I  
12:55:42 4 don't know what she was doing behind me.

12:55:44 5 Q. So my question to you is: Describe the  
12:55:46 6 manner in which the search of your person occurred.

12:55:49 7 A. Oh. At that point the first officer  
12:55:53 8 relented, and they proceeded to say -- either  
12:56:03 9 before or after -- I can't remember which -- he  
12:56:05 10 said, okay. Stand here and look at the wall.  
12:56:08 11 Okay. Take off your pants -- drop your pants to  
12:56:11 12 around your ankles, bend over, spread your cheeks.  
12:56:18 13 I don't remember if he said cough.

12:56:25 14 And I think he had -- I think they -- that  
12:56:30 15 happened -- that was about -- that whole thing took  
12:56:34 16 about 15, 20 seconds.

12:56:35 17 Q. Were you ever completely nude during  
12:56:36 18 the course of this search of your person?

12:56:49 19 A. I don't remember. I can't tell you if  
12:56:50 20 I had to take my socks off or not. I think they  
12:56:53 21 had me pull off my shirt, but I'm not sure.  
12:56:57 22 I don't -- it's --

12:56:59 23 Q. Were you ever physically touched in any

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